

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	CASE NO. 2:14-CR-127
)	
vs.)	MAY 18, 2016
)	
ROBERT B. LEDBETTER, ET AL.,)	9:00 A.M.
)	
DEFENDANTS.)	VOLUME 23
)	

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE, and a jury
COLUMBUS, OHIO

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transcript produced by computer.

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TRIAL ONE - VOL. 23 - 4502

WEDNESDAY MORNING SESSION

MAY 18, 2016

- - -

(Thereupon, the following proceeding was held in open court with all counsel and defendant present; jury not present.)

THE COURT: Good morning.

Mr. DeVillers, you had something you needed to put on the record, is that right, before we brought the jury in?

MR. DEVILLERS: Yes, Your Honor. We checked on the firearm taken from Mr. Ledbetter's van in December of 2007.

THE COURT: Yes.

MR. DEVILLERS: There's indication there was DNA on it. That DNA standard still exists. And we'll offer Mr. Ledbetter a sample -- if he wants to give us a sample, we will test that DNA against his sample. But we need to know pretty quickly. That's all. So I just want to put that on the record, we're giving him that opportunity, but we probably need to know by the end of today or tomorrow to get it tested in time.

THE COURT: Mr. Berndt?

MR. BERNDT: Your Honor, this is the first I've heard of it -- the government's offer. I can also tell the Court, though, that assuming that we provided a sample for the comparison, what would happen is is that they would do their testing, of course, if it came back not favorable to

1 Mr. Ledbetter, I would want to have it tested also. We're in
2 the midst of this trial. This trial's going to be over in
3 about two weeks, and I don't see how I can properly go through
4 that process at this stage of the proceedings. That's my gut
5 check on that.

6 THE COURT: Okay. That's fine. I think that the
7 important thing is that as a matter of record, the offer was
8 made. You can mull it over. And if you think you have the
9 time to get both in, you may. We can always put it on an
10 expedited tract. It's entirely your call. I think that is
11 your position. Am I correct, Mr. DeVillers?

12 MR. DEVILLERS: It is, Your Honor. We understand
13 their position.

14 THE COURT: Would close of business today --

15 MR. BERNDT: By the end of today, Your Honor.

16 THE COURT: All right. Thank you.

17 Mr. Gatterdam, you had a matter.

18 MR. GATTERDAM: Judge, I just wanted to, before we
19 start with witnesses, I have a stipulation that I'd like to
20 read to the jury.

21 THE COURT: Linda, bring in the jury, please.

22 (Jury in at 9:02.)

23 THE COURT: Good morning, ladies and gentlemen, and
24 welcome back. We're poised to have a full day again today.

25 Once again, I really appreciate your patience that

1 you've displayed throughout this trial. And I know that I
2 speak on behalf of all of the parties when I say that.

3 Mr. Gatterdam has a stipulation that has been agreed to
4 by the parties that he wishes to read at this time.

5 Mr. Gatterdam.

6 MR. GATTERDAM: Thank you, Your Honor.

7 The government and Christopher Harris stipulate and
8 agree that the 1987 Chevrolet Monte Carlo driven by Christopher
9 Harris was purchased by his mother, Pamela Harris, on or before
10 June 1st, 2005. The dates of ownership of this vehicle are set
11 forth in Harris's Exhibit D1, which is admitted into evidence.

12 That concludes the stipulation.

13 THE COURT: Thank you.

14 MR. DEVILLERS: So stipulated, Your Honor.

15 THE COURT: Your next witness, Mr. Martinez.

16 MR. MARTINEZ: Good morning, Your Honor. The United
17 States calls Officer Timothy Maclellan.

18 THE COURT: All right. Officer Maclellan, please come
19 forward and be sworn.

20 (Witness sworn.)

21 THE COURT: Officer, bend the microphone toward you
22 and speak clearly into it.

23 Mr. Martinez, you may proceed.

24 MR. MARTINEZ: Thank you, Your Honor.

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TIMOTHY MACLELLAN

Called as a witness on behalf of the Plaintiff, being first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MARTINEZ:

Q Good morning, sir.

A Good morning.

Q Would you please state your name for the record and
spell your last name.

A Officer Timothy Maclellan, spelled M-A-C-L-E-L-L-A-N.

Q Where do you work?

A City of Columbus Police Department.

Q How long have you been employed with the Columbus Police
Department?

A Thirteen years.

Q What are your current duties?

A I work patrol, work the street.

Q Were you employed as a police officer before you came to
Columbus?

A I was.

Q Where did you work?

A City of Grove City.

Q I'd like to focus on the latter part of 2011. What were
your duties back in 2011?

1 A I was a street officer, working the streets just like I
2 do now.

3 Q Any particular area?

4 A 2011, I was on the west side of Columbus.

5 Q I'd like to focus specifically on the evening of October
6 the 19th, 2011, just before 8 p.m. Can you please tell the
7 ladies and gentlemen of the jury what were you doing at that
8 time?

9 A I was working patrol car as usual, responded to dispatch
10 runs.

11 Q Did you receive a call of a shooting that night?

12 A I did.

13 Q Do you recall the area of town the shooting was reported
14 from?

15 A The Hilltop area, which is 70 and Broad Street, just
16 west of all that area.

17 Q Did you respond to the call?

18 A I did.

19 Q Please tell the ladies and gentlemen of the jury what
20 you did when you got to the scene?

21 A I responded to the scene of -- the call of a shooting.
22 I was the first officer on scene as other officers were
23 arriving simultaneously. I observed a group of people standing
24 around the sidewalk leading up to the house. There was a white
25 female laying on the ground on the sidewalk leading up to the

1 house. She appeared to have been shot in the head.

2 Q You said that there was some people standing around?

3 A Correct.

4 Q Can you describe the crowd?

5 A There was several women. I do remember one young child
6 probably eight or nine years old. She was very chaotic
7 screaming. She is the one who stuck out.

8 Q Did you come to identify who that little girl was?

9 A I believe the daughter of the person that was shot.

10 Q You mentioned the victim a moment ago. Can you please
11 describe her condition?

12 A She was laying on the ground, the path leading up to the
13 house. She had a pizza box next to her, a cell phone. And she
14 was laying on the sidewalk with blood coming out of the back of
15 her head, the side of her head.

16 Q Did she speak?

17 A She did not.

18 Q Was she responsive at all?

19 A Not at all.

20 Q In your view, did she appear to be alive when you found
21 her?

22 A No, she did not.

23 Q At some point, did medical personnel arrive?

24 A They did.

25 Q You mentioned there was some property around the victim?

1 A There was, from what I recall. It appeared she had just
2 gotten home, or was leaving her car and she had a pizza box on
3 the ground next to her and a cell phone right in the same
4 vicinity.

5 Q What did you do after you found the victim there on the
6 sidewalk?

7 A Once we started trying to clear people away from the
8 body, secure the scene, which means roping off the scene with
9 yellow crime scene tape, and trying to ask people if they saw
10 anything, knew anything, saw what happened and go from there.

11 Q Did you learn any information that night about what
12 might have happened?

13 A No. As a first responder, you kind of secure the scene
14 and let -- call the detectives in. And at that point, there
15 wasn't any solid information that I got, so not much more for
16 me to do at that point.

17 MR. MARTINEZ: Your Honor, may I have just a moment,
18 please?

19 THE COURT: Yes, you may. While you're doing that,
20 Mr. Martinez, Officer, you said you were the first officer on
21 the scene that evening?

22 THE WITNESS: Yes, sir.

23 THE COURT: Had you been called to the scene, or how
24 did you get notice to come to the scene?

25 THE WITNESS: They dispatched officers on a call of a

1 shooting, and I just happened to be the closest one. So I was
2 the first one there.

3 MR. MARTINEZ: Your Honor, Mr. Berndt and I would like
4 to have a quick side-bar.

5 THE COURT: Sure.

6 - - -

7 (The following proceeding was held at side-bar.)

8 MR. MARTINEZ: The reason Mr. Berndt and I asked for
9 this side-bar is I was going to hand Officer Maclellan all the
10 crime scene photos, as we've done with most of our witnesses.

11 THE COURT: Right.

12 MR. MARTINEZ: So he could identify them and admit
13 them into evidence. I was then going to display just a few.

14 THE COURT: A certain number, I see.

15 MR. MARTINEZ: A couple of them won't be objectionable
16 just because of the house. I was going to show the three that
17 might cause some concern. The first is Number 26, which is you
18 can see the entire victim's body.

19 THE COURT: Yes.

20 MR. MARTINEZ: The second was Number 30, see her face
21 and the wound.

22 THE COURT: Yeah, kind of a head shot.

23 MR. MARTINEZ: And the third was Number 31 just so we
24 could see the property, the box and the phones and keys and
25 whatnot. You see part of the hand and leg there, but you can't

1 really see the face or anything. Those are the three I was
2 going to show that I thought Mr. Berndt might have some
3 concern.

4 MR. BERNDT: Your Honor, I don't have a concern with
5 the two photos, the one of the body and then the one that's a
6 little bit more focused on the head of the deceased Crystal
7 Fyffe. My understanding is that Mr. Martinez intends on
8 introducing as evidence all of the photos that --

9 MR. MARTINEZ: 31 and 2 --

10 MR. BERNDT: -- that also includes other shots of the
11 body which I don't believe -- and this one, which I don't
12 believe should be admitted because I think it would be
13 cumulative. They've got an autopsy. They have the other
14 photos.

15 MR. MARTINEZ: We don't have the autopsy photos in
16 evidence. I would also say this is what we've done with every
17 crime scene. We've admitted all the photos and we've only
18 shown a select few so they weren't cumulative.

19 THE COURT: Right. And I have no problem with your
20 proffering the entire set of crime scene photos or the three
21 that you intend to admit. But with respect to the photos of
22 the body, since it is somewhat gruesome, we will limit it to
23 the photos that you display to the jury. Because those other
24 photos of the victim don't show anything different than the
25 three that you're going to show. So make a note that I'm going

1 to admit all of these photos except the ones of the bodies that
2 you do not display.

3 MR. MARTINEZ: Okay.

4 THE COURT: Okay.

5 MR. BERNDT: Thank you.

6 (The following proceeding was held in open court.)

7 MR. MARTINEZ: Your Honor, may I approach the witness?

8 THE COURT: Yes, you may.

9 BY MR. MARTINEZ:

10 Q Officer Maclellan, I've just handed you what's been
11 marked as Exhibit 84-2#-002 through 84-2#-034. If I could ask
12 you to just take a quick look at those photographs, Officer
13 Maclellan. Do you recognize those photos, sir?

14 A I do.

15 Q What are those photographs?

16 A These are photos of the scene, the crime scene.

17 Q And do those photos accurately depict the scene as it
18 was the night you responded to the call?

19 A As I remember, yes.

20 MR. MARTINEZ: At this time, the government would move
21 for the admission of Exhibits 84-2#-002 through 84-2#-034 with
22 the directive that the Court gave at side-bar.

23 THE COURT: All right. Those will be admitted.

24 Any objection, Mr. Berndt?

25 MR. BERNDT: No, Your Honor.

1 THE COURT: Mr. Gatterdam?

2 MR. GATTERDAM: No, Your Honor.

3 THE COURT: Ms. Dixon?

4 MS. DIXON: No, Your Honor.

5 THE COURT: Mr. Meyers?

6 MR. MEYERS: No, Your Honor.

7 THE COURT: Mr. Nolder?

8 MR. NOLDER: No, sir.

9 THE COURT: You may publish the photos that you wish
10 to publish, Mr. Martinez.

11 MR. MARTINEZ: Thank you, Your Honor.

12 Special Agent Lauber, if we may see Exhibit 84-2#-002.

13 Ms. Clark, I intend to publish all the photographs that
14 we show. Thank you.

15 BY MR. MARTINEZ:

16 Q Officer Maclellan, do you recognize what's in that
17 photograph?

18 A I do.

19 Q What is that?

20 A I believe that is the house leading up to where the
21 victim was shot.

22 MR. MARTINEZ: May I please see Exhibit 84-2#-026?

23 BY MR. MARTINEZ:

24 Q Officer Maclellan, do you recognize what's in that
25 photograph?

1 A I do.

2 Q What is that?

3 A That is the victim, Ms. Fyffe, deceased, in the front
4 walkway on the house.

5 Q Is that the condition Ms. Fyffe was in when you found
6 her?

7 A I believe she was face down at first when I found her.
8 She's been moved since, when the medics do what they do.

9 MR. MARTINEZ: May I please see Exhibit 84-2#-030?

10 BY MR. MARTINEZ:

11 Q Officer Maclellan, do you recognize that?

12 A I do.

13 Q And what's being displayed in that photograph?

14 A Just another photo of the victim.

15 Q And you mentioned the wound and the blood. Can you
16 please describe what you were referring to earlier?

17 A I believe, from what I remember, that she had a gunshot
18 on the side or back of her head, and all the blood that came
19 out, obviously.

20 MR. MARTINEZ: And then finally, may I please see
21 Exhibit 84-2#-031?

22 BY MR. MARTINEZ:

23 Q Officer Maclellan, what are we looking at in this
24 photograph?

25 A That was the pizza box and the cell phone that I

1 referred to laying next to her.

2 MR. MARTINEZ: May I have a moment, Your Honor?

3 THE COURT: Yes, you may.

4 MR. MARTINEZ: Your Honor, no further questions at
5 this time.

6 Thank you, Officer.

7 THE WITNESS: Thank you.

8 THE COURT: Cross-examination, Mr. Berndt?

9 MR. BERNDT: Very briefly, Your Honor.

10 - - -

11 CROSS-EXAMINATION

12 BY MR. BERNDT:

13 Q Officer Maclellan, good morning.

14 A Good morning.

15 Q How are you doing this morning?

16 A Okay.

17 Q Sir, this was obviously a very serious crime that was
18 committed that evening, correct?

19 A Correct.

20 Q You don't have any information to impart to this jury as
21 to who's responsible for this crime, do you?

22 A I do not.

23 Q What kind of neighborhood are we in here?

24 A Residential neighborhood. I'm not sure what --

25 Q West side?

1 A It's the west side.

2 Q Is it considered a high-crime neighborhood?

3 A Parts -- parts of the west side are considered high
4 crime, yes.

5 Q Have you worked the west side for a while -- or during
6 this time period, did you work the west side for a while?

7 A I have worked west side for a while, and during this
8 time I had been there for a while.

9 Q Other homicides occur on the west side?

10 A Yes, they do.

11 Q At or near this homicide scene from October of 2011?

12 A I couldn't speculate as to where exactly they occur.

13 Q I wasn't asking you to speculate.

14 A There are homicides that occur, yes.

15 MR. BERNDT: Thank you. Nothing further, Your Honor.

16 THE COURT: Thank you. Mr. Gatterdam, any questions?

17 MR. GATTERDAM: No, Your Honor.

18 THE COURT: Ms. Dixon?

19 MS. DIXON: No, sir.

20 THE COURT: Mr. Meyers?

21 MR. MEYERS: No, Your Honor.

22 THE COURT: And Mr. Nolder?

23 MR. NOLDER: No, Your Honor.

24 THE COURT: Any redirect, Mr. Martinez?

25 MR. MARTINEZ: No redirect. Thank you.

1 THE COURT: Officer Maclellan, you may be excused.

2 Thank you.

3 MR. DEVILLERS: Your Honor, may I have a moment?

4 THE COURT: Yes, you may.

5 MR. DEVILLERS: Your Honor, we have a stipulation.

6 THE COURT: All right.

7 MR. DEVILLERS: It's stipulated between the parties
8 that Government's Exhibit 84-15, which is a phone -- is a phone
9 found on the sidewalk near the victim on Wednesday,
10 October 19th, 2011, of the homicide of Crystal Fyffe at 614
11 Belvidere Avenue. It's further stipulated that Government's
12 Exhibit 84-14 is a cell phone on the pizza box found by the
13 victim, Crystal Fyffe, on October 19, 2011, at 614 Belvidere
14 Avenue.

15 THE COURT: Thank you. So stipulated, Mr. Berndt?

16 MR. BERNDT: Yes, Your Honor.

17 THE COURT: Your next witness, Mr. Kelley.

18 MR. KELLEY: Keith Leighton, Your Honor.

19 Your Honor, the stipulation did eliminate a witness. If
20 I could just verify. I know our witness is here.

21 THE COURT: All right.

22 MR. KELLEY: He is here, Your Honor, being retrieved
23 from the fourth floor. I apologize for the delay.

24 THE DEPUTY CLERK: Sir, come forward and be sworn,
25 please.

1 (Witness sworn.)

2 THE COURT: Please proceed, Mr. Kelley.

3 MR. KELLEY: Thank you, Your Honor.

4 - - -

5 KEITH LEIGHTON

6 Called as a witness on behalf of the Plaintiff, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. KELLEY:

10 Q Please state your name and spell your last name for our
11 jury.

12 A My name is Keith Leighton, L-E-I-G-H-T-O-N.

13 Q Who do you work for?

14 A I'm a special agent with the Drug Enforcement
15 Administration here in Columbus.

16 Q How long have you been with the DEA?

17 A Twenty-four-and-a-half years.

18 Q Were you assigned to a task force at any point in the
19 last few years?

20 A Yes, I was.

21 Q What task force were you assigned to?

22 A The Safe Streets Task Force with the FBI.

23 Q Did that cause you to actually be located at the FBI?

24 A Yes, I had an office there, a desk.

25 Q What kind of work were you involved in with the FBI?

1 A I was assigned to work a gang by the name of the Short
2 North Posse.

3 Q How long were you involved in that investigation?

4 A It was approximately two years.

5 Q At some point you left for greener pastures?

6 A Yes. I was called back to the DEA.

7 Q Approximately when did you leave the investigation?

8 A I was at the FBI from 2013 to 2016. So I worked the
9 Short North Posse, I would say, from 2013 to 2015. And then
10 the last year I did a heroin investigation separate from that.

11 Q In the course of that investigation with the Short North
12 Posse, were you called upon to find some records and documents?

13 A I was.

14 Q First, I want to draw your attention to an incident in
15 April of 2008, the murder of Tyrell Davis. Were there some
16 records that you were asked to obtain as it related to his
17 murder from May 25th, 2008?

18 A Yes, there was.

19 Q And likewise, were there documents from the murder of
20 Rodriccos Williams November of 2007?

21 A Yes.

22 Q Let's first go to the Rodriccos Williams murder.

23 MR. KELLEY: If we could have Government's Exhibit
24 48-13.

25

1 BY MR. KELLEY:

2 Q Can you tell us what we're seeing at 48-13?

3 A This is an e-mail that I sent to Dave DeVillers.

4 Q Why did you send him this e-mail?

5 A I had obtained some records from Budget, and it was a
6 little bit confusing. I actually had to speak to people at
7 Budget. So I actually put it down in writing just to get it
8 all sorted out.

9 Q Were you surprised to see that as an exhibit?

10 A Yes, I was.

11 Q We'll blame Mr. DeVillers for that.

12 If we could go to page two of the exhibit?

13 MR. BERNDT: Objection. Side-bar.

14 - - -

15 (The following proceeding was held at side-bar.)

16 THE COURT: Go ahead, Mr. Berndt.

17 MR. BERNDT: Your Honor, I would object to the use of
18 this document. This document appears to be something that the
19 agent put together based upon his conversations with Budget
20 Rent A Car. It actually specifically references things that
21 they told him. So I think that the document simply
22 encapsulates hearsay, and I would object to the use of this
23 document.

24 MR. KELLEY: The document is the cover page of the
25 exhibit, Your Honor, and I gave it to him in that form.

1 THE COURT: What is the exhibit again?

2 MR. KELLEY: The rental car records. This is the
3 cover page, and the way he has seen it includes that e-mail. I
4 agree with Mr. Berndt. I have no intention of getting that
5 e-mail before the jury.

6 MR. BERNDT: But also we're talking about the
7 testimony about the explanation of the e-mail would also be the
8 witness repeating the hearsay that's in that cover letter.

9 THE COURT: So my understanding, that hasn't happened
10 yet. He hasn't asked that. And based on Mr. Kelley's
11 representation, I understand he is not going to elicit
12 testimony from this witness that had been captured in this
13 e-mail that would necessarily contain hearsay.

14 What I don't know -- and probably the more compelling
15 question -- is whether this witness will offer something that
16 would otherwise be considered hearsay but for the fact that it
17 was a conversation being introduced to show the effect on the
18 listener, that is, show what they may have told this
19 investigator something that caused him to do something else but
20 puts it in another category of statements.

21 MR. KELLEY: I'm about to do the foundation. I didn't
22 mean to mislead by having that statement first.

23 MR. BERNDT: Kevin, just as a reminder, I believe I
24 stipulated to the Budget records. I'm not concerned if you go
25 through it with him, but they were stipulated to.

1 (The following proceeding was held in open court.)

2 THE COURT: Mr. Kelley, please proceed.

3 MR. KELLEY: Thank you.

4 BY MR. KELLEY:

5 Q We're looking at 48-13. I think we wanted to go to page
6 two of that document. Did you, in fact, obtain records from
7 Budget Rental Car?

8 A Yes, I did.

9 Q As it related to this particular incident, what dates
10 are we talking about?

11 A I can't really see. That's much better. November 1st,
12 of '07 to November 8th of '07.

13 Q Tell us first how you obtained these records, just so
14 our jury understands the process of you obtaining them.

15 A Well, during the investigation, there was a couple
16 things that happened. First of all, we were looking at some
17 bank records of Mr. Ledbetter, and we noticed around the time
18 of this -- of the Rodriccos Williams murder that there was a
19 charge on his bank records from Budget. And also we had been
20 told by a cooperator that they had rented a car --

21 MR. GATTERDAM: Objection.

22 THE COURT: Overruled.

23 BY MR. KELLEY:

24 Q You may finish your answer.

25 A We had been told by a cooperator that they had used a

1 rental car during this crime.

2 Q What did you do, then, in response to learning that?

3 A I sent a subpoena to Budget for records under the name
4 of Ledbetter for that time period.

5 Q And then what did they provide you?

6 A They came back -- again, this is why that previous
7 exhibit was sent to Mr. DeVillers. They came back with a
8 couple different records, and it was a little confusing at
9 first.

10 Q What we're going to do is take it page by page and look
11 at these documents. This is page two of that Exhibit, 48-13.
12 And tell us the date that shows a vehicle rented on this page
13 two. The date the vehicle was rented?

14 A On November 1st.

15 Q And due back in on what date?

16 A November 8th.

17 MR. KELLEY: And Your Honor, I think these records are
18 subject to a stipulation. So if we may publish them from this
19 point going forward?

20 THE COURT: Yes, you may.

21 BY MR. KELLEY:

22 Q And just so our jury knows where you're looking, can you
23 indicate on the screen where the date is that it was rented and
24 when it was due back?

25 A The top circle it says rented, and it has a date and

1 then due in.

2 Q And is there also an indication in the lower left as to
3 who was doing the rental?

4 A Yes.

5 Q What is the name?

6 A Ledbetter, first name Robert.

7 Q And does there appear to be a signature then at the
8 bottom of the page?

9 A Yes.

10 Q What does the signature appear to be?

11 A His name, Robert Ledbetter.

12 Q If we go to page three of the exhibit, if the agent can
13 again help us by blowing up the upper part of it. Does this
14 give us a customer name in the upper left?

15 A Yes. Ledbetter, first name Robert.

16 Q And then is there a phone number just to the right of
17 that?

18 A Yes.

19 Q What's the phone number?

20 A (614)499-3467.

21 Q Then there appears to be some comments below the name
22 Ledbetter in the document. What does that comment say
23 regarding the customer?

24 A Misunderstood the customer.

25 Q And likewise on the left of that is yet another comment?

1 A Yes. Customer wanted car exchanged and I closed.

2 Q Was this consistent with your conversations with Budget
3 Rental as to what happened on this vehicle?

4 A Yes.

5 Q And if we go on the lower part of this document, does it
6 refer to what kind of car was rented?

7 A Yes. It was a silver Mitsubishi Galant.

8 Q And two door or four door?

9 A Four door.

10 Q Now, if we go to our next page, which would be page
11 three of this document, and again if we start at the top, what
12 is this document telling us? First starting -- again, it shows
13 a date again of November 1st to November 8th. What is
14 different about this page from the previous pages?

15 A It's a different vehicle.

16 Q And what vehicle is now being rented?

17 A On the left-hand side about four or five lines down, it
18 says a gray Pontiac it looks like, Grand Prix, four door.

19 Q What dates are indicated for the date of the contract?

20 A Same dates, 1st through the 8th of November 2007.

21 Q And is there also then a name for the customer at the
22 lower left part of the document?

23 A Yes. Same name, Ledbetter, first name Robert.

24 Q Now, if we go to the last page of the document, again,
25 starting up at the top, customer name for this vehicle?

1 A Ledbetter, first name Robert.

2 Q And again, do we have a cell phone number for it as
3 well?

4 A (614)499-3467.

5 Q And the lower part of the document, does it indicate the
6 vehicle type?

7 A Yes, gray Pontiac Grand Prix, four door.

8 Q Does this appear to relate to the return of the vehicle?

9 A Yes.

10 MR. KELLEY: May I have a moment, Your Honor?

11 THE COURT: Yes, you may.

12 BY MR. KELLEY:

13 Q Agent, were you also asked to retrieve documents as it
14 related to the Tyrell Davis murder from April 25th, 2008?

15 A Yes, I was.

16 Q What is it you were looking for in that situation?

17 A We had been told that another rental had been used for
18 that murder, that one being we were looking for a white Kia.
19 And we were even actually told that it had been rented from
20 Budget.

21 Q What did you do, then, after learning that information?

22 A We sent a subpoena like we always did, like in the last
23 case. However, I don't remember the exact conversation, but we
24 were directed by Budget personnel to a warehouse where we
25 actually had to go through boxes of old records. For whatever

1 reason, they had been just housed in this warehouse, for lack
2 of a better word, and it was just, you know, hundreds of boxes.
3 And we just took a team out there one day and just went
4 through.

5 Q What is it you were looking for specifically?

6 A A white Kia -- we knew that, we were told that -- rented
7 from Budget. And the only other thing we had to go by was a
8 name. And that was we were looking for a last name of Wilson.

9 Q And were you able, in fact, to find a set of documents
10 related, that matched up to that vehicle?

11 A Yes, we were.

12 Q If we could have Government's Exhibit 55-12. There's a
13 series of pages to this document. Do you remember reviewing
14 this document previously?

15 A Yes.

16 Q And is this document the rental records that you
17 obtained?

18 A It's really blurry on my screen, but it appears to be.

19 Q We'll make Agent Lauber try to fix that.

20 A Yes.

21 Q And so I think what we're looking at would be the front
22 page of this document; is that correct?

23 A Correct.

24 Q Is there a date of the scheduled rental on this, if we
25 look at the very top?

1 A April 18th of 2008.

2 Q And then is there the name Wilson somewhere located in
3 this list?

4 A Yes. Third line from the bottom going up, Renee Wilson.

5 Q There appears to be a time column as well that suggests
6 the time that it was actually picked up?

7 A Correct, 15:44.

8 Q If we now go to page two of this document, please.

9 MR. KELLEY: If we could blow up the upper half of
10 this document. A little farther, please.

11 BY MR. KELLEY:

12 Q Can you tell us about page two of this document?

13 A Just continuation of the rental period. It was rented
14 on April 18th of 2008 and it was due in on the 21st of April
15 2008.

16 Q And what type of vehicle are we talking about, per the
17 records?

18 A It's on the left-hand side about halfway down, white
19 Kia. I guess that's an Optimum, something like that, four
20 door.

21 MR. KELLEY: These are also subject to stipulation.
22 So if we may publish this page for the jury.

23 THE COURT: Yes, you may.

24 BY MR. KELLEY:

25 Q If you would, you can actually touch the screen and

1 circle it. There is a date in and date out on this page, is
2 there not?

3 A At the top -- whoops, I kind of messed it up. Rented
4 and due in.

5 Q Try again. And then the type of vehicle is where?

6 A (Witness complying.)

7 Q Did you, in fact, learn from these records whether the
8 car was returned on the 21st of April?

9 A I learned that it was not. It was kept out longer.

10 Q If we can then go to page four of the document.

11 MR. KELLEY: If we could enlarge that for the agent's
12 eyes.

13 BY MR. KELLEY:

14 Q What does this appear to be on page four?

15 A The rental -- the return of the rental.

16 Q What return date is indicated there at the top?

17 A April 25, 2008.

18 Q And is that the day of the Tyrell Davis murder?

19 A Yes.

20 Q What do we have in the time column as it relates to a
21 Renee Wilson?

22 A 13:19 returned that day.

23 MR. KELLEY: May I have a moment, Your Honor?

24 THE COURT: Yes, you may.

25 MR. KELLEY: If you can take that down, Agent. Thank

1 you.

2 BY MR. KELLEY:

3 Q In your previous life before the FBI, you were working
4 with the DEA, right?

5 A Correct.

6 Q In May of 2011, were you involved in a controlled
7 delivery of marijuana in the Columbus area?

8 A Yes, I was.

9 Q What was your basic role in that activity?

10 A I was the case agent.

11 Q Did that marijuana delivery involve Brandon Ledbetter?

12 A Yes, it did.

13 Q Do you recall when Brandon Ledbetter was arrested for
14 the load of marijuana coming in?

15 A It was May 24th, 2011.

16 Q Did you have cause, then, after that to have interaction
17 with a woman by the name of Crystal Fyffe?

18 A Yes.

19 Q Can you explain to the jury how that occurred?

20 A After the arrest on the 24th, Mr. Ledbetter was
21 incarcerated that night. The previous day -- we have a task
22 force officer -- or not anymore, but at the time there was a
23 task force officer by the name of Sanford Creighton. He's
24 actually a Franklin County sheriff officer, deputy sheriff, and
25 he used to work at the jail. So one of the things that he

1 always did for us is whenever we arrested somebody, he would
2 pull all the jail calls. Because even though they know they're
3 being recorded, very often people incarcerated will make a
4 mistake or slip or think the calls really aren't monitored when
5 they were.

6 So Task Force Officer Creighton had obtained the calls
7 for all three defendants, not just Mr. Ledbetter, as just a
8 matter of normal investigation.

9 And in one of the calls, Mr. Ledbetter was heard
10 telling -- I don't know if it was his girlfriend or an
11 ex-girlfriend, Crystal Fyffe, about removing some money from
12 the residence.

13 Q Was there a quantity of money that he referenced that
14 you were looking for?

15 A He mentioned \$30,000 on the call.

16 Q What did you all do in response?

17 A We did some checks. We tried to find where Ms. Fyffe
18 lived at the time because it was our belief that that was drug
19 proceeds and subject to seizure based on our previous
20 investigation with the marijuana. We went out to a residence
21 we believed to be where Ms. Fyffe resided. It actually was,
22 but we were told by neighbors that she had moved back with her
23 mom.

24 Q So did you, in fact, go to that other location?

25 A We did. The first one was Beal Drive and then we went

1 to Belvidere on the west side where her mom lived at the time.

2 Q Did you ultimately locate Crystal Fyffe?

3 A We did.

4 Q What happened at the house?

5 A We encountered her. He never went inside. We did this
6 all outside. We explained who we were, what we were doing, why
7 we were there. She was a little hesitant at first. She seemed
8 very nervous. But then she said, Okay, I know what you're here
9 for. She actually went inside on her own and brought out -- it
10 looked like a little cooler or lunchpail. I remember it was
11 red in color, and it contained a large amount of cash, and gave
12 it to us.

13 THE COURT: Officer, excuse me. Could you tell us,
14 Special Agent, the approximate date.

15 THE WITNESS: That was the very next day after the
16 arrest. That was May 25th, 2011.

17 BY MR. KELLEY:

18 Q If your report indicates that you got information on
19 May 25th, that you met with Ms. Fyffe on May 26th --

20 A I'm sorry, yes. The 24th -- I misspoke. The arrest of
21 Robert Ledbetter was the 24th. We received that information,
22 the calls, on the 25th. And we went the next day on the 26th.
23 I'm sorry. It was the day after.

24 BY MR. KELLEY:

25 Q Did Ms. Fyffe indicate where this money came from?

1 A She told us that she was instructed by Mr. Ledbetter to
2 go to the other address that we were at first, the Beal Drive
3 address, and obtain it from -- I guess it was a duct, air duct,
4 air conditioning duct in the master bedroom of that house.

5 Q Ultimately, did you come up with an amount of currency
6 that was seized?

7 A We did.

8 Q What was that total?

9 A \$30,570.

10 Q Did Ms. Fyffe say anything else in relation to this
11 currency or Mr. Ledbetter?

12 A Yes. When she finally just -- when she gave it to us,
13 she made a statement to all of us standing there, saying, Take
14 it, I don't want it, I'm scared to death of him.

15 Q What did you all do with the money?

16 A We took the money and seized it and we treated it like
17 any other asset that we seize, whether it be a car or cash. It
18 goes through the normal seizure and forfeiture process.

19 MR. KELLEY: If I may have a moment, Your Honor?

20 THE COURT: Yes, you may.

21 MR. KELLEY: I have no further questions, Your Honor.
22 Thank you.

23 THE COURT: Okay. Mr. Berndt, cross?

24 MR. BERNDT: I do, Your Honor. Thank you.
25

- - -

CROSS-EXAMINATION

BY MR. BERNDT:

Q Special Agent Leighton, good morning.

A Good morning, sir.

Q How are you today?

A I'm good. You?

Q I'm fine. My name is Jeff Berndt. I represent Robert Ledbetter. Can you hear me okay?

A Yes, I can.

Q Great. I want to talk to you briefly about this issue with the rental car.

A Okay.

Q The one from Budget, the silver Mitsubishi, correct?

A Correct.

Q That car was rented in the name of Robert Ledbetter, correct?

A Correct.

Q And you say that you had some type of informant or cooperator who gave you information that a rental car was used by whoever murdered Rodriccos Williams, correct?

A Correct.

Q Did they tell you that that was a car rented by Mr. Ledbetter, or did they tell you that that was a car rented by somebody else?

1 A I don't remember the exact details, that there was a
2 rental car used in that crime.

3 Q Well, do you remember running a check on other people
4 who allegedly rented a car for that incident?

5 A I don't recall if we did or not. There was a lot of
6 subpoenas going out. I remember that we learned that there was
7 a rental car used. And we saw during that time period that
8 there was a rental car expense on Mr. Ledbetter's bank records.

9 Q Understood. But my question still remains: Did the
10 cooperator tell you that that car was rented by Mr. Ledbetter
11 or somebody else?

12 A I don't recall exactly.

13 Q Do you have records that might indicate that?

14 A I personally don't. I don't know if it's in the FBI
15 case file. We were all given different tasks, and we just had
16 a big master file. That was just one of my tasks to pursue.

17 Q I understand. And again, it was rented in the name of
18 Robert Ledbetter, correct?

19 A Correct.

20 Q And I didn't notice if there was even like a credit card
21 information on that Budget Rent A Car?

22 A I think there was a credit card number. I'd have to
23 look at it again.

24 MR. BERNDT: Could we bring up 48-13, page 3, 4, or 5?
25 I think any of those will have it.

1 BY MR. BERNDT:

2 Q Can you see that okay, Special Agent?

3 A I can. Isn't that one in the lower left where it says
4 swipe present and CX and a long number?

5 Q I'm not an expert on these receipts, but it would appear
6 to me that that would indicate that it was charged on a credit
7 card. Would you agree?

8 A Yes. Isn't that what you asked me?

9 Q Yes.

10 A Okay. Yes.

11 Q Just so I understand this, this is a vehicle rented in
12 the name of Robert Ledbetter, correct?

13 A Correct.

14 Q Using a credit card of Robert Ledbetter, correct?

15 A Correct.

16 Q Much like you or I would do if we walked into an airport
17 to rent a car, right?

18 A Correct.

19 Q And it was for a silver car, correct?

20 A A silver Mitsubishi.

21 Q Okay. In terms of this incident that occurred in May of
22 2011 in regard to money and securing that money from Crystal
23 Fyffe -- I want to switch gears here for you. Okay?

24 A Sure.

25 Q Mr. Ledbetter was arrested as a result of the good work

1 of the Drug Enforcement Administration with about a thousand
2 pounds of marijuana -- or I'm sorry, a thousand kilograms of
3 marijuana, correct?

4 A Correct.

5 Q About 2,200 pounds of marijuana?

6 A Approximately, yes.

7 Q Drugs probably worth in the neighborhood of \$2 million?

8 A Correct.

9 Q Huge shipment of drugs, correct?

10 A It was large.

11 Q He was arrested in Grove City, I believe?

12 A Yes, that's correct. Well, actually that's where the
13 transaction went down. He was actually followed back into
14 Columbus and then he was arrested.

15 Q Correct. He was in a vehicle that had a stall device
16 placed on it?

17 A A kill switch, correct.

18 Q And he was apprehended, correct?

19 A Yes.

20 Q He wasn't armed, was he?

21 A No, he was not.

22 Q And he didn't offer any resistance?

23 A I would say he did. He ran.

24 Q How far did he run?

25 A Not far.

1 Q Okay.

2 A But he did attempt to flee. That's resistance to me.

3 Q And then when you caught him, did he offer you further
4 resistance?

5 A No, not at that time.

6 Q Okay. So you say that there was a phone call that
7 Mr. Ledbetter made once he was arrested?

8 A Correct.

9 Q Did you keep a copy of that phone call?

10 A I'm not sure. That case is closed. And once it's
11 closed, usually all the evidence -- you know, once there's no
12 appeals and the sentence has been handed down, usually
13 everything's destroyed.

14 Q So you're saying that everything is destroyed in
15 relationship to this event that occurred with Mr. Ledbetter in
16 May of 2011?

17 A Except the reports. But normally even the marijuana
18 was, you know, eventually burned and destroyed. And once all
19 the appeals are done and there's nothing left to be
20 adjudicated, normally all the evidence, drug and nondrug, is
21 destroyed.

22 Q Okay. And Mr. Ledbetter was charged in federal court
23 with a marijuana crime, correct?

24 A Correct.

25 Q Mr. Ledbetter pled guilty to that marijuana crime,

1 correct?

2 A Correct.

3 Q Mr. Ledbetter was given a prison sentence as a result of
4 that crime, correct?

5 A Correct.

6 Q And that offense doesn't have anything to do with the
7 Short North Posse, does it?

8 A No. Not -- no.

9 Q Now, this was \$30,000 in round figures, correct?

10 A Approximately.

11 Q You didn't know Crystal Fyffe before this incident, did
12 you?

13 A No, I did not.

14 Q And she told you that she moved this money from an
15 address on Beal I think you said?

16 A Beal Drive. I don't remember the exact number, but it
17 was Beal Drive.

18 Q To the place where she was living on Belvidere, correct?

19 A Correct.

20 Q And then you secured the money on May 26th or 25th of
21 2011, correct?

22 A It was the 26th.

23 Q What do you -- when you seize money like that, do you
24 notify people that the money's been seized?

25 A Yes.

1 Q Do you notify them that if they have any right to the
2 money they should make a claim?

3 A Yes.

4 Q Did Mr. Ledbetter make a claim for that money?

5 A I'm not sure because that's not my -- we have a certain
6 woman in my office. She is the asset forfeiture specialist.
7 And her, combined with DEA headquarters in Washington D.C.,
8 they do all the notifications. That's her job. We make the
9 seizures. We process them. We take it to the bank. They give
10 us a check if it's currency. We hand it over to the U.S.
11 Marshals. As an agent, I'm out of it. I don't get involved
12 with who puts in claims, whether they're honored, denied. It
13 goes on.

14 Q Did you prepare for your testimony here today?

15 A Yes, I did.

16 Q Now, are you aware of Mr. Ledbetter making a claim or
17 anybody making a claim for that money?

18 A I am not aware. I am not aware in any seizure in any
19 case. That's asset forfeiture people. And just to take that a
20 step further, the reason behind that is that we never see the
21 money. We're not -- it goes into a gigantic Department of
22 Justice fund which is spread out among many federal agencies.
23 So it's really not in my interest what happens with the money.
24 I do my job, and then it just goes on.

25 Q I understand. And you felt that this money was drug

1 proceeds based upon the fact that Mr. Ledbetter had just been
2 arrested with a thousand kilograms of marijuana, correct?

3 A Correct.

4 MR. BERNDT: Thank you very much.

5 THE WITNESS: Thank you.

6 MR. BERNDT: Nothing further, Your Honor.

7 THE COURT: Thank you, Mr. Berndt.

8 Mr. Gatterdam, any cross?

9 MR. GATTERDAM: No questions.

10 THE COURT: Ms. Dixon?

11 MS. DIXON: No questions, Your Honor.

12 THE COURT: Mr. Meyers?

13 MR. MEYERS: No questions.

14 THE COURT: Mr. Nolder?

15 MR. NOLDER: No, Your Honor.

16 THE COURT: Mr. Kelley, any redirect of Agent
17 Leighton?

18 MR. KELLEY: One question, Your Honor. Two questions.

19 - - -

20 REDIRECT EXAMINATION

21 BY MR. KELLEY:

22 Q If we could go on Government's Exhibit 48-13. I believe
23 you were asked about page three of this document?

24 MR. KELLEY: If we could publish this for the jury,
25 Your Honor?

1 THE COURT: Yes, you may.

2 BY MR. KELLEY:

3 Q Mr. Berndt asked you about page three, and I think it
4 was regarding credit card information. Do you recall that
5 question?

6 A Yes, I do.

7 Q I want to be clear as far as the date on this agreement.
8 When was this silver Mitsubishi four door returned to the
9 rental car place?

10 A On the 4th of November 2007.

11 Q And when was Rodriccos Williams killed?

12 A The day before, on the 3rd of November 2007.

13 MR. KELLEY: No further questions, Your Honor. Thank
14 you.

15 THE COURT: Mr. Berndt, any recross?

16 MR. BERNDT: Just one question, Your Honor.

17 - - -

18 RECROSS-EXAMINATION

19 BY MR. BERNDT:

20 Q Special Agent, did you -- when you secured these records
21 from Budget, did you ask them what the condition of the car was
22 when it was returned?

23 A I don't recall that I did.

24 MR. BERNDT: Thank you.

25 Thank you, Your Honor.

1 MR. KELLEY: Nothing further, Your Honor. Thank you.

2 THE COURT: Agent Leighton, thank you very much, sir.

3 You may be excused.

4 THE WITNESS: Thank you.

5 MR. DEVILLERS: Your Honor, the government's next
6 witness is Steven Palmer.

7 THE COURT: All right.

8 Mr. Palmer, please come forward and be sworn.

9 (Witness sworn.)

10 THE COURT: Mr. Palmer, please bend the microphone
11 toward you and speak clearly into it.

12 THE WITNESS: Okay.

13 THE COURT: Thank you.

14 Mr. DeVillers, please proceed.

15 MR. DEVILLERS: Thank you, Judge.

16 - - -

17 STEVEN PALMER

18 Called as a witness on behalf of the Plaintiff, being first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. DEVILLERS:

22 Q Good morning, Mr. Palmer.

23 A Good morning.

24 Q Please state your full name and spell your last name.

25 A Steven, middle initial E, last name Palmer, P-A-L-M-E-R.

1 Q What do you do for a living, Mr. Palmer?

2 A I'm an attorney.

3 Q Do you practice any particular type of law?

4 A Primarily criminal defense law here in Columbus, Ohio.

5 Q How long have you been a lawyer?

6 A Twenty years, give or take a few months.

7 Q Do you have a -- is there anyone you work with?

8 A At different times I've worked with different people.

9 Right now, I have two associates in my office. One is named
10 Jeffery Linn and the other Keri Collin.

11 Q In 2011, how many different attorneys worked in your
12 office?

13 A I would have to double check, but I think for relevant
14 purposes, Jeff Linn was with me and there might have been one
15 or two others.

16 Q Do you have support staff?

17 A I do. At any given time -- I've always had an office
18 manager, and at any given time I've had a receptionist and
19 maybe a law clerk or two law clerks.

20 Q Did you have occasion to meet a person by the name of
21 Crystal Fyffe?

22 A I did.

23 Q Can you tell about when that was?

24 A That was in May of 2011. She contacted my office
25 probably by telephone and was seeking representation.

1 Q Do you know what she wanted representation on?

2 A There were -- there were two matters that she wanted to
3 talk about. She was being contacted by authorities I believe
4 in Lancaster, Ohio, as well as some federal authorities
5 relative I think to a case that was going on in Fairfield
6 County, which is Lancaster. She was being -- I think they were
7 telling her that she was going to be charged with tampering
8 with evidence, or some other crime, if she didn't cooperate.

9 Q Eventually did you meet with some prosecutors in that
10 regard?

11 A I did. I met with a gentleman named Gregg Marx. At
12 that point, he was the chief Fairfield County prosecutor.

13 Q And the tampering with evidence allegations, were
14 they -- what did they pertain to?

15 A The tampering with evidence allegations, according to
16 the authorities that I talked to, had to do with an allegation
17 that Ms. Fyffe may have assisted in disposing of clothing or
18 other items relative to a homicide or murder that occurred I
19 believe in Pickerington, but it would have been Fairfield
20 County.

21 Q Do you remember when this homicide was to have taken
22 place?

23 A I don't know specifically. I think it was earlier in
24 2011, maybe before that.

25 Q Do you know the name of the victim?

1 A The name of the victim was Rodriccos -- I can't recall
2 the last name. Williams, maybe.

3 Q Was there -- you indicated there was a federal issue as
4 well?

5 A There was a federal issue. Ms. Fyffe had been contacted
6 by federal authorities about some cash that she allegedly had
7 in her house. And I believe it was the sum of \$30,000. And
8 they wanted her to turn that money over. I don't know how they
9 found out she had \$30,000. I don't know the circumstances
10 behind it. I can tell you what she told me about the money.
11 But how -- what the federal authorities knew or how they knew
12 it, I don't know.

13 Q Why don't you tell us what she told you about the money.

14 A She indicated that a gentleman named Ledbetter had given
15 her the money, 30,000 cash, to hold onto for him or for her to
16 use if she needed it maybe. I can't recall exactly why.

17 Q Did she tell you who this Mr. Ledbetter was?

18 A It was her boyfriend or former boyfriend or some version
19 of that.

20 Q When you first met with Ms. Fyffe, do you know where
21 Mr. Ledbetter was?

22 A I don't. I don't know where he was. I think at some
23 point during my representation of Ms. Fyffe, he was apprehended
24 and put in jail, I think in Fairfield County jail. But at the
25 time, for some reason, I think he was not yet in custody.

1 Q Do you remember the date you met with Ms. Fyffe?

2 A If I'm correct, it was May 23, 2011.

3 Q Do you remember where you met with her?

4 A It would have been my conference room at my office here
5 in Columbus.

6 Q Did you meet with her with anyone else besides yourself?

7 A I did. Jeff Linn, my associate, also participated in
8 the meeting.

9 Q Did Mr. Linn participate in the representation of
10 Ms. Fyffe throughout the --

11 A He did.

12 Q What did Ms. Fyffe -- did Ms. Fyffe tell you anything
13 about Mr. Ledbetter?

14 A She did. She told us a lot about him, actually. I
15 mean, she -- we spent some time talking to her about why she
16 was at the office, and she explained those two problems. We
17 told her we would make contact with authorities and do what we
18 could about those issues. She indicated that Ledbetter was her
19 boyfriend or former boyfriend. She gave some of the history
20 about that, and she indicated all sorts of stuff about their
21 relationship.

22 Q Did she indicate any concerns she had with
23 Mr. Ledbetter?

24 A She did. She was -- from the outset, when she came into
25 our office and talked to us, she was clear she was scared to

1 death of the guy.

2 Q Did she give -- you said she gave you some background on
3 her relationship with Mr. Ledbetter. Did she give you any
4 background about her relationship with Mr. Ledbetter pertaining
5 to some of her concerns?

6 A She did. I think she told us a story where
7 Mr. Ledbetter had harmed her before. I don't think it was
8 relative to why she was there, but it certainly gave background
9 as to why she was afraid. She indicated that -- it might have
10 been as a result of her dating another guy or breaking up.
11 Whatever the reason was, she told us that Ledbetter had shot
12 her before. She described how that happened. Said she -- I
13 think she was on her knees, put up her hands and she was shot
14 through her hands. I recall her telling us that she spit out
15 bullet fragments. She was taken to the emergency room or the
16 hospital, not sure which one. She told us -- I don't think she
17 came clean or told the hospital or doctors or any police
18 officers or anybody else who interviewed her exactly what
19 happened. I think she made some story up about it.

20 Q Do you know about when that happened?

21 A I don't. Maybe the year before. For some reason, I
22 think it was the year before.

23 Q Okay. Let me -- I want to hand you something. I want
24 to hand you what's been marked as Government's Exhibit 84-9.

25 MR. DEVILLERS: Your Honor, may I approach?

1 THE COURT: Yes.

2 BY MR. DEVILLERS:

3 Q Tell us what that is, Mr. Palmer.

4 A This is a copy, photocopy, of my office file on the
5 Fyffe matter.

6 Q What is an office file?

7 A Somebody comes into my office, we create a file. We do
8 it both virtually on the computer and do it physically in the
9 form of a Manila file folder. In that file would go in
10 documents relative to the representation, any notes that we
11 create, any memoranda we either dictate or type out ourselves,
12 and anything that we receive from anybody on the case.

13 Q And is your handwriting -- are your handwritten notes in
14 that file?

15 A Yes.

16 Q I believe you said you had an -- the name escapes me,
17 your partner?

18 A Jeffery Linn, L-I-N-N.

19 Q Are some of Mr. Linn's notes in there as well?

20 A Yes.

21 Q When you take notes in the course of your business, do
22 you do it at or near the time you're talking to the witness?

23 A Yes. I mean, in the situation that I described when I
24 met with Ms. Fyffe, or another client, in my conference room
25 and Jeff was with me, we would have both been taking notes. I

1 have a practice of trying to have somebody else in the room
2 when I meet people, particularly if I -- if I want to pay
3 attention to the conversation, I have somebody else taking
4 notes because it's hard for me to do both. I'm not a good
5 multi-tasker.

6 Q You keep the file as a regular course of business?

7 A I do.

8 Q I want to show you what's been marked as Government's
9 Exhibit 84-18.

10 MR. DEVILLERS: May I approach the witness, Your
11 Honor?

12 THE COURT: Yes, you may.

13 BY MR. DEVILLERS:

14 Q Tell me what that is, sir.

15 A This is a printout of our computer records relevant to
16 the case. We have in my office a software program called
17 Amicus Attorney. It's -- I guess it's like proprietary
18 software for attorneys that helps us manage our law practice.

19 In that -- maybe it's best described as really beefed up
20 contact manager. And we keep notes and track records of phone
21 calls and other things, scheduling and things like that that
22 occur in a case. And this is a printout of what would be saved
23 in our computer system.

24 Q Does that chronologically go through your contact with
25 Ms. Fyffe?

1 A It does.

2 Q Would it include phone calls?

3 A Yes.

4 Q What other things would it include?

5 A Well, phone calls is a big one. We get a phone call
6 from a client, everybody in my office is instructed to open up
7 an icon, so to speak, on the computer system that says --
8 that's attached to a file. We create a virtual file. The
9 files have contacts assigned to them. We click a little phone
10 call icon, or telephone icon, and up comes a box that indicates
11 who is calling. We can fill in that information if it doesn't
12 populate automatically. And we can type in as we speak, or
13 even later for that matter, the substance of the communication.

14 My office, for instance, gets a call from somebody and
15 I'm not there, they'll leave a message. Whoever took the call
16 at my office, that icon will pop up. They'll write down what
17 the message was and send it to me. When I get it and return
18 the call hopefully quickly, I click the icon and I type in the
19 substance of the communication. That all gets saved here.
20 It's all linked to the same file. So if there's a court date
21 and we're taking notes relevant to a court date, it would be
22 there. Anything that would happen in our office hopefully gets
23 attached to the Amicus file.

24 Q I want to ask you -- getting back to the homicide -- do
25 you recall what else she told you about the homicide?

1 A Yes. I mean, she told us -- she didn't tell us that she
2 was involved. I guess what she told us is that she was being
3 contacted by authorities about the Rodriccos homicide and we,
4 of course, asked her what she knew about it. She denied to us
5 she had any involvement in disposing of clothing or other items
6 relevant to that homicide.

7 She told us that she thought Ledbetter had done it, or
8 somebody for him had done it, or one of his crew had done it,
9 so to speak. She told us about a time -- she told us about how
10 she put that together. And if I -- if my memory serves me
11 correctly, she described a scenario where she received a phone
12 call from Mr. Ledbetter. And he had asked her to look up an
13 address. And this is before the homicide or maybe relative to
14 the time of it. She looked up the address and didn't think
15 much of it because he portrayed himself in real estate -- or
16 maybe he was in real estate, I don't recall, but that was her
17 impression. She supplied him that address by looking it up on
18 Google or telephone or computer or some other electronic means.

19 She later linked that together after she saw a story on
20 the news about a homicide at that address. And I think in her
21 head she put two and two together and concluded that he was
22 involved in some way, shape or form.

23 Q I want you to take a look at Government's Exhibit 84-9.
24 I don't believe yours has page numbers on it. I'd ask the
25 agent to pull up 84-9 page 21. Could you take a look at that

1 for me, Mr. Palmer?

2 A Yes.

3 Q Can you see it on the screen?

4 A I'm going to try to find it on my notes. I can read it
5 better. I think I do have page numbers. I do. Okay.

6 Q Just for my benefit, is there a page number on your
7 document?

8 A Yes. It's 21 at the bottom.

9 Q That works out well. Okay. Do you see anything in
10 regards to what you're testifying about in regards to a text
11 message -- first of all. I'm sorry. This page, these -- are
12 these handwritten notes?

13 A They are.

14 Q Are they yours?

15 A No. I believe this is Mr. Linn's handwriting, L-I-N-N.

16 Q When you are working with Mr. Linn, are you in the
17 interviews with him?

18 A Yes. We were both in this interview.

19 Q Okay. And would this help refresh your recollection as
20 to what she told you during this interview?

21 A Yes.

22 Q Can you go towards -- in the middle of those notes is
23 there something indicating about text messages?

24 A Yes.

25 Q And what's it say?

1 A It says -- it's got a triangle there. That stands for
2 defendant. That's our shorthand for defendant. It says,
3 "Defendant now remembers a text from Lead asking for directions
4 to location of later homicide."

5 Q Okay. And then when you say "defendant" in your notes,
6 who are you referring to?

7 A In those notes -- in these notes it would have been
8 Crystal. We do criminal defense work, so just about everybody
9 I talk to it's my habit to write D. Sometime you may see a W
10 maybe attached to this case because, when I represent a
11 witness, I try to make myself write W. But sometimes it says
12 defendant even though she may not have been charged with
13 anything yet.

14 Q Had she ever talked to you about any of Brandon
15 Ledbetter's relatives, specifically a brother?

16 A She did.

17 Q What did she tell you about the brother?

18 A She told me that his brother had been killed at some
19 point. And she told me that Ledbetter had made statements or
20 had taken action against whoever he thought did it. I believe
21 he said -- I believe she told us that he killed whoever killed
22 his brother.

23 Q All right. Did you -- you talked about a crew that she
24 was talking about. What did she tell you about a crew?

25 A She used the word crew.

1 MR. GATTERDAM: Objection. Can we have a side-bar?

2 THE COURT: Yes.

3 - - -

4 (The following proceeding was held at side-bar.)

5 MR. GATTERDAM: Your Honor, my objection might be a
6 little premature, but it's coming one way or the other.

7 THE COURT: Okay.

8 MR. GATTERDAM: I realize the Court had made a
9 previous ruling regarding the statements that come in against
10 Mr. Ledbetter and why. However -- and we also filed a motion
11 in limine as to any statements that implicate Mr. Harris. I
12 don't know if he's doing it now or if he's going to do it, but
13 I still object to any statements coming in about Christopher
14 Harris' name. I thought the Court -- part of its ruling had
15 been forfeiture by wrongdoing. It's very clear that Chris had
16 been in prison since 2008. He could not be involved in the
17 Crystal Fyffe homicide. I don't believe he could have anything
18 to do with it. Any inference to him -- I think where this is
19 headed, Mr. Harris would be supposedly -- would be somebody he
20 could call on if he needed help or somebody she was afraid of
21 may kill or maybe -- Mr. Harris is in prison so he is incapable
22 of that. I realize I can do that in cross.

23 THE COURT: And in closing.

24 MR. GATTERDAM: But I don't think it comes out. I
25 don't think the hearsay -- I think it's hearsay of Christopher

1 Harris is different than --

2 THE COURT: Okay. Go ahead. I didn't mean to
3 interrupt you.

4 MR. GATTERDAM: You were going to indicate -- part of
5 any conspiracy, he's not part of it. He's not charged with
6 anything involving Crystal Fyffe nor could he be because he was
7 in prison. So I don't think any statements about him come in.

8 MR. DEVILLERS: Obviously, she is involved in the
9 homicide of Rodriccos Williams. Ms. Fyffe is the person that
10 called and texted the directions to them. Therefore, she is a
11 conspirator. So I think the statement is in furtherance of the
12 conspiracy. And there's going to be more evidence --

13 THE COURT: You said she is an un-indicted
14 co-conspirator?

15 MR. DEVILLERS: She is clearly.

16 MS. DIXON: I would join in that objection but to also
17 add a foundational objection with respect to "crew" and what
18 time period he's talking about when his notes are referencing
19 his crew. Because there -- in my mind, there is a crew who
20 will harm her in 2011, which clearly can't be my client who has
21 been locked up since 2008. I want a foundation to be laid for
22 when you say crew, what are you talking about? His crew with
23 respect to Rodriccos Williams, or a crew that will harm her in
24 2011?

25 THE COURT: Mr. Durden.

1 MR. DURDEN: I too understand there were two mentions
2 of the word crew, being a crew that may have been there for
3 Rodriccos Williams as well as a later crew. I didn't want to
4 prematurely object.

5 MR. MEYERS: I join for Ussury on both fronts because
6 he, too, was incarcerated by the time Ms. Fyffe died.

7 MR. NOLDER: I'll stay silent.

8 THE COURT: I'm going to overrule your objection. Of
9 course, I already ruled on it but you may have a continuing
10 objection. The objection is preserved. I'm going to sustain
11 yours, Ms. Dixon and Mr. Durden. So put a time period on it as
12 part of your foundation, Mr. DeVillers.

13 MR. DEVILLERS: Yes, Your Honor.

14 (The following proceeding was held in open court.)

15 THE COURT: Mr. DeVillers, please continue.

16 MR. DEVILLERS: Yes, Your Honor.

17 BY MR. DEVILLERS:

18 Q We were talking -- the last thing, I was asking you
19 about a crew that Ms. Fyffe would have mentioned part of -- did
20 she talk about a particular crew that Mr. Ledbetter had?

21 A She did.

22 Q And what would this crew do?

23 A She indicated that he had a group of people that would
24 help him do things. And I think her -- I think she even told
25 us at one point that Mr. Ledbetter had told her to put a series

1 of names and phone numbers into her telephone in case he was in
2 jail or something else happened, they could help her. I think
3 these were the guys that were helping her -- or helping him
4 commit crimes, for lack of a better way to say it.

5 MR. GATTERDAM: Objection. Speculation, "I think."

6 THE COURT: Overruled.

7 BY MR. DEVILLERS:

8 Q I want to direct your attention to page 13 of that
9 exhibit. If you look down on the bottom of that exhibit.

10 A Yes.

11 Q If you kind of just read through that last kind of three
12 or four lines to yourself.

13 A Okay.

14 Q Does that refresh your recollection to some of the names
15 given to you by Ms. Fyffe?

16 A It does.

17 Q What were the names given to you?

18 MS. DIXON: Objection, Your Honor. Foundation.

19 THE COURT: Overruled.

20 THE WITNESS: Some of the names were -- she used the
21 name Old Dog was one of the names, Young Buck. She also
22 referred to him as Buckwheat. And there was another gentleman
23 named Earl that she had mentioned to us that day. And maybe --
24 I wrote down another name, the name Elijah.

25 Q Do you know Mr. Ledbetter's brother's name, the one that

1 was deceased?

2 A I think that was Elijah.

3 Q You said Earl?

4 A Yes.

5 Q Do you recall her saying anything about -- in particular
6 about a person by the name of Earl?

7 A Earl, she told us, had been in jail for I think an
8 unrelated homicide and was involved in the Rodriccos homicide.
9 She was being told, and she advised us -- and frankly we
10 learned from other -- it was known that Earl was allegedly
11 accusing her of disposing of clothing. And that was the
12 impetus of the investigation against her, and that would have
13 been the impetus of the tampering with evidence allegation.

14 Q I want to direct your attention to page 26 of that
15 document. If you go to the bottom of page 26, could you read
16 the bottom of 26 when it goes from Earl to the first part of
17 the next page as well to yourself?

18 A Yes.

19 Q Does that refresh your recollection as to what she told
20 you more specifically about Earl?

21 A Yes.

22 Q What did she tell you?

23 A She told us that Earl was arrested in Columbus for
24 killing a gentleman named Paco and one other guy. Earl cut a
25 deal for eight years and admitted to his involvement in the

1 Rodriccos killing with several other individuals.

2 Q Okay. Did Ms. Fyffe indicate who Earl was talking
3 about?

4 A With respect to?

5 Q Who he was telling on?

6 A Oh, Ledbetter.

7 Q Did she indicate how many other people besides
8 Mr. Ledbetter?

9 A She said three others. That's what my notes would say.
10 She said Brandon and three others.

11 Q Do you recall how many times about you met with
12 Ms. Fyffe?

13 A I don't recall specifically. I know once, at least
14 twice, maybe three or even four times in the office and once at
15 the Fairfield County Prosecutor's Office.

16 Q During the time period you met with her, did her
17 attitude towards Brandon increase or decrease depending on the
18 day or --

19 A She was always clear to us that she was terrified of the
20 guy. And she didn't want us to do anything -- she didn't want
21 to tell on him. She didn't want to cooperate. She was afraid
22 that somebody, either Ledbetter directly or one of his people,
23 would cause her harm. And she told us that if he didn't do it,
24 one of the crew guys would. And she was scared. I can't say
25 it any other way.

1 Q I want to direct your attention to page 26, again, of
2 that document.

3 A Okay.

4 Q And getting back to the Rodriccos Williams murder, did
5 she indicate whether Brandon talked to her about being
6 concerned about phone records or cell towers?

7 MR. DURDEN: Your Honor, side-bar.

8 - - -

9 (The following proceeding was held at side-bar.)

10 THE COURT: Mrs. Evans, read back the question.

11 (Thereupon, the last question was read by the court
12 reporter.)

13 MR. DURDEN: My issue is not an objection to the
14 question itself, but it appears that Mr. Palmer doesn't seem to
15 have independent recall in his recollection, a review of it.
16 But now he's reading from this document versus using it as
17 refreshing his recollection before he testifies.

18 THE COURT: All right. Do you have any response?

19 MR. DEVILLERS: Your Honor, I'm actually having him
20 read it and seeing if it refreshes his recollection and then
21 talk about it. I'm not having him read it to the jury.

22 THE COURT: All right. He first needs to establish
23 that his recollection is exhausted.

24 MR. DEVILLERS: Understood.

25 THE COURT: And then you may refresh.

1 MR. DURDEN: It happened twice, and I tried to let it
2 go, but it seems this testimony is going to go this path --

3 THE COURT: I understand. So going forward, let's use
4 the traditional, well-accepted approach.

5 MR. DEVILLERS: Okay.

6 THE COURT: All right. Good enough.

7 (The following proceeding was held in open court.)

8 BY MR. DEVILLERS:

9 Q Without referring to your notes, at least at this point,
10 do you have an independent recollection of her talking about
11 cell towers or phone records?

12 A I mean, I've already looked at my notes. I don't want
13 to be dishonest about this. But I did actually know she had
14 talked to us about cell phones -- or cell phone towers before I
15 looked at my notes.

16 Q Tell us about your independent recollection about those
17 cell towers.

18 A She told us something about cell tower records linking
19 Ledbetter to the area of the Rodriccos killing. And I don't
20 have any more independent recollection than that.

21 Q When would this be? What time period?

22 A That she told us this?

23 Q Yes.

24 A This would have been in May. This would have been
25 May 2011 when we were consulting with her about her case -- or

1 her matter.

2 Q Okay. Eventually you indicated that Gregg Marx -- you
3 contacted Gregg Marx?

4 A I did.

5 Q Did you talk to him?

6 A I did.

7 Q Did you come to some sort of at least a general
8 understanding?

9 A I did.

10 Q What was that general understanding?

11 A The plan, after I talked to Crystal was to contact both
12 the police officer who was contacting her and then Gregg Marx,
13 because the police officer contacting her wouldn't have any
14 authority to offer any sort of deal, but Gregg Marx would. So
15 the idea was to contact Gregg and find out what he wanted.

16 And I eventually wanted to, and did, establish a proffer
17 agreement whereby Ms. Fyffe would provide information and, in
18 exchange for that, they would agree not to use her statements
19 against her if she were later charged with a crime unless
20 either they found out she was lying or they learned information
21 from an independent source.

22 Q Did you talk to Ms. Fyffe about the possibility of
23 testifying against Mr. Ledbetter?

24 A I did.

25 Q And what did she tell you?

1 A She didn't want to do it.

2 Q Why didn't she want to do it?

3 A She was afraid that he would kill her, or one of the
4 people would kill her that he associated with.

5 Q Was there a time period where she talked about leaving?

6 A Yes.

7 Q What did she tell you about that?

8 A Our advice, when we met her, was if you're afraid of
9 these people or this gentleman or anybody else, you should
10 leave town. We even talked to the authorities. We talked to
11 the Pickerington police detective. I can't remember his name.
12 And I talked to Gregg Marx about it. And it was discussed that
13 she would leave Columbus to go to Youngstown, I think. And
14 that way nobody would know where she was. We would be able to
15 contact her. We told her to maintain some sort of cell phone
16 communication with us. The authorities would know where she is
17 but nobody else would.

18 Q Did she indicate if Mr. Ledbetter said anything to her
19 about contacting authorities?

20 A I don't recall if she said anything specifically about
21 that.

22 Q I'd like to -- would anything refresh your recollection?

23 A My notes I have certainly would.

24 Q I want to look at Government's Exhibit's 84-18 which I
25 believe you already identified as your Amicus software?

1 A Yes.

2 Q If you go to page two and just read that paragraph to
3 yourself.

4 A Okay.

5 Q Did Mr. Ledbetter -- did that refresh your recollection
6 as to her conversations with Mr. Ledbetter?

7 A Yes.

8 Q And what is it that he told her, if he would do -- what
9 did he tell her?

10 A He told her, according to Crystal -- or Ms. Fyffe, he
11 told her she would be swimming with the fishes. And that's in
12 quotes in our documents about -- or if she was playing him.

13 Q Okay. So, when you met with Mr. Marx -- did you
14 eventually meet with Mr. Marx with Ms. Fyffe?

15 A We did.

16 Q And did you talk to him?

17 A She did.

18 Q Do you remember where that meeting was?

19 A That meeting occurred at the Fairfield County
20 Prosecutor's Office down in Lancaster.

21 Q And what was discussed?

22 A We showed up at the meeting. I drove separately. I met
23 her there. I first met briefly with Mr. Marx, as well as his
24 detective. And we -- it would be typical what I would do. I
25 would say we're here for the proffer, what are the terms, make

1 sure we're all on the same page about what is the agreement.

2 And then she came in the room, in a conference room
3 there at their prosecutor's office, and she provided
4 information similar to what she told us.

5 Q Did she talk about the directions?

6 A About directions?

7 Q Texting the directions to Mr. Ledbetter?

8 A She did. She did. She talked about that. She talked
9 about how she was afraid of him, how she was afraid of
10 testifying.

11 MR. DURDEN: Objection. Nonresponsive.

12 THE COURT: Overruled. It's all in the context of the
13 proffer session.

14 THE WITNESS: What else did she talk about? She
15 discussed the generalities. She denied that she had anything
16 to do with it. I think she said she didn't recall having
17 anything to do with disposing of clothing or throwing anything
18 away. She reiterated that she was afraid of Ledbetter. She
19 provided a list of names, I think the same list that I had
20 gotten from her earlier in our meeting, and maybe even phone
21 numbers. And the detective and Marx -- I don't know if Marx
22 was writing it down, but the detective was taking notes. I was
23 taking notes.

24 BY MR. DEVILLERS:

25 Q Did she give you some names of individuals that phone

1 numbers were provided for?

2 A Yes.

3 Q And who provided those names and phone numbers?

4 A She did.

5 Q Who provided them to her?

6 A Oh, Mr. Ledbetter did, yeah.

7 Q And what was the purpose of providing the names and
8 phone numbers?

9 A My understanding from Ms. Fyffe was that those names and
10 numbers were provided to her if Mr. Ledbetter were not around,
11 or if he were in jail, these are the individuals that could
12 protect her. And she could contact them if she needed
13 anything. So they were in her phone with names and phone
14 numbers.

15 Q Do you remember some of those names?

16 A One was Santa Clause. I don't independently remember
17 any of the others as I'm sitting here.

18 Q Did she provide a phone number for this Santa Clause as
19 well?

20 A I believe she did.

21 Q Did she tell you anything about -- anything else about
22 Santa Clause?

23 A I think she did. I don't recall what it was
24 independently now.

25 Q Let's get back to the \$30,000. Do you recall what

1 happened to that \$30,000?

2 A Yeah. I think she felt a lot of pressure to do
3 something with that money. And before I had worked something
4 out, I believe I had made contact with somebody from the DEA,
5 or tried to. But before I knew it, they had actually entered
6 her house either with a warrant or otherwise, either a knock
7 and talk, or just went in with a warrant and took the money.

8 Q Do you recall, was she -- did she indicate if anybody
9 from -- associated with Mr. Ledbetter tried to contact her
10 about that money?

11 A She did.

12 Q What did she say?

13 A She said her attorney wanted her to bring the money to
14 him.

15 Q Her attorney?

16 A Or his attorney. Forgive me.

17 Q And who was his attorney?

18 A Jeff Berndt.

19 Q After the meeting with Mr. Marx, what happened?

20 A After the meeting with Mr. Marx -- she was a mess during
21 this meeting. She was -- just to give you some preference to
22 this. She was nervous. She was scared. She was in tears
23 through some of it. So I basically intervened. And they
24 wanted her to say that she had disposed of clothing. She never
25 gave them that information.

1 So I basically said, Listen, guys, let's just postpone
2 this. Give me a chance to meet with her again. Give me a
3 chance to talk to her. Let this settle down, and we'll
4 reconvene at a later date.

5 We then left the meeting and I had a conversation with
6 her outside the prosecutor's office in sort of the atrium or
7 entryway.

8 Q What was the subject of that conversation?

9 A I told her that if she -- I stressed she needed to tell
10 the truth on this. If she did have anything to do with
11 disposing of clothing or other items, she had just been given
12 immunity, in fact. It was more than a proffer agreement by the
13 end of it. Earlier on in that meeting, even before they talked
14 to her, they offered her immunity. They said anything she had
15 to do with any of this, she would not be prosecuted. So it was
16 an immunity agreement. That was the Holy Grail. She wasn't
17 going to be prosecuted for anything. So she had to be
18 truthful, and that's what I told her. She said she was scared.
19 She didn't ever want to testify in a courtroom against
20 Mr. Ledbetter. And she then produced a letter that she had
21 received from him.

22 Q Did she show you that letter?

23 A She did. She didn't want to. I coaxed it out of her.
24 I said, You got to show it to me, I'm your lawyer, that kind of
25 stuff. She eventually showed it to me.

1 Q Did you read the letter?

2 A I did.

3 Q Do you remember what the letter said?

4 A I don't remember precisely what it said, but it talked
5 about how if she were cooperating -- it was a threat she would
6 be killed, or words to that effect. I don't know how it was
7 stated.

8 Q What happened to that letter, do you know?

9 A I tried to get her to give it to me. She would not.
10 She took it. She took it with her. I don't know where it is
11 today.

12 Q Did you and your partner try to convince her to do
13 something?

14 A We tried to convince her to leave. We wanted her to get
15 out of the city. We tried to convince her to tell the truth.
16 We wanted to -- we just wanted her safe. We had the case sort
17 of in hand at that point, or at least under control. She
18 wasn't going to be prosecuted. She just needed to get in a
19 protective situation of some sort.

20 Q And the immunity offer, was that still good even after
21 she told them about the text messages and the directions?

22 A Yes, at least it wasn't revoked.

23 Q Okay. Was there a time after that where -- are you
24 aware she had contact with Mr. Ledbetter?

25 A Yes, she did. We had told her -- we had told her to cut

1 off all communication with him. And apparently that didn't
2 happen and she had contact with him.

3 Q Did she tell you what she told Mr. Ledbetter?

4 A I don't believe she told me. I think she talked to
5 Mr. Linn about that in my office.

6 Do you want me to tell you what --

7 Q I do.

8 A She told Mr. Linn that she had contacted Mr. Ledbetter,
9 that she had told him that she had actually proffered and
10 provided information and shared that with him. She said that
11 his family was urging her to go see him again, and there was
12 some communication --

13 Q Whose family was?

14 A Mr. Ledbetter's.

15 Q Was that conversation with Mr. Linn documented?

16 A It was.

17 Q I want to show you what's been marked as Government's
18 Exhibit 84-18. And I'd like you to go to -- bear with me a
19 second -- five pages from the back. I believe the date is
20 August 5th, 2011.

21 A Okay.

22 Q Is that the conversation you were talking about as
23 documented by your Amicus?

24 A Yes.

25 Q Do you remember the last time you talked to Ms. Fyffe?

1 A The last time I talked to her I think was outside the
2 prosecutor's office, me personally.

3 Q Do you know what ended up happening to Ms. Fyffe?

4 A She was shot.

5 Q Do you remember how you found that out?

6 A A Columbus police detective called me, or called my
7 office. I remember I walked down the stairs from court that
8 day. My office manager said something to me about it, and I
9 received a call -- or I returned a call to a Columbus police
10 officer and got some information on it.

11 Q Did you talk to the Columbus police officer?

12 A I did very briefly. They wanted information about it.
13 I had privilege issues regarding communications with a client
14 so I couldn't provide much information.

15 Q Eventually, what happened to those privilege issues?

16 A There was a court order I think issued out of our
17 probate court, or somewhere it was waived and I was permitted
18 to divulge information.

19 Q At that time, did you receive a subpoena from us?

20 A I did.

21 Q Was that subject to the documents you've testified
22 about?

23 A It is, or was.

24 MR. DEVILLERS: May I have a moment, Your Honor?

25 THE COURT: Yes, you may, Mr. DeVillers.

1 BY MR. DEVILLERS:

2 Q When the police initially came to you, did you give them
3 information as to who -- what a possible suspect would be?

4 A I think initially I told them that she had -- I was
5 vague. I don't recall if I gave them an actual suspect. I
6 referred them to the prosecutor's office in Fairfield County.

7 Q Okay. Did Ms. Fyffe ever, during your time period, did
8 she ever talk -- you said -- in the proffer with Gregg Marx,
9 did she deny collecting clothes for -- or bringing clothes to
10 Mr. Ledbetter after the Rodriccos Williams' murder?

11 A She did both. I think she denied it and then she said
12 she didn't recall, or maybe she didn't recall and then denied
13 it, but words to that effect.

14 Q When you talked to her afterwards, did she say anything
15 more about that?

16 A No. She never said that she did that.

17 MR. DEVILLERS: Nothing further, Your Honor.

18 THE COURT: Thank you, Mr. DeVillers. Ladies and
19 gentlemen, it's 10:40 now.

20 I take it, Mr. Durden, that you have some
21 cross-examination; is that right?

22 MR. DURDEN: I do, Your Honor.

23 THE COURT: We're going stand in recess until 10:55 at
24 which time we'll return with Mr. Palmer's cross-examination.

25 (Recess taken from 10:42 a.m. to 11:00 a.m.)

1 THE COURT: Mr. Durden, are you ready to proceed with
2 your cross?

3 MR. DURDEN: I am, Your Honor.

4 THE COURT: Please proceed.

5 - - -

6 CROSS-EXAMINATION

7 BY MR. DURDEN:

8 Q Good morning, Mr. Palmer.

9 A Good morning.

10 Q My name is Aaron Durden. I represent Robert Ledbetter,
11 and I have some questions. You've met Mr. Berndt before?

12 A I have.

13 Q Let me start off by asking you a question. You spoke
14 with a homicide detective, James Porter, on October 24th of
15 2011?

16 A I can't recall that it was -- that was the correct name,
17 or the correct date exactly. But, yes, I think you're
18 referring to the phone call or conversation, yes.

19 Q And I'd like to have you read a homicide investigation
20 report.

21 A Okay.

22 MR. DURDEN: May I approach, Your Honor?

23 THE COURT: Yes.

24 THE WITNESS: Okay.

25 MR. DURDEN: May I retrieve the document?

1 THE COURT: Yes, you may.

2 BY MR. DURDEN:

3 Q Now, Mr. Palmer --

4 A Yes, sir.

5 Q -- when questioned by James Porter, the homicide
6 detective, you stated that you did not have a smoking gun --

7 A That's correct.

8 Q -- in this investigation?

9 More specifically, you could only provide background
10 information, correct?

11 A Correct.

12 Q So my question is, you're not here to speak for
13 Ms. Crystal Fyffe. You're simply to give information that you
14 may share that you've known during your representation, true?

15 A Yes.

16 Q So let's talk about that.

17 Now, I understand your first meeting with her occurred
18 on or about May the 23rd?

19 A Correct.

20 Q And you do exclusively criminal law?

21 A I would say predominantly. Exclusive -- every now and
22 then we do something else, but mostly criminal law.

23 Q And she came to see you, as you indicated, for two
24 matters; one being a seizure of funds, 30,000-some odd dollars
25 from the DEA?

1 A Yes.

2 Q And secondly, for the investigation against her
3 concerning a murder in Pickerington, correct?

4 A Yes.

5 Q Your retainer fee, I understand, was five thousand
6 dollars?

7 A Yes.

8 Q Did she pay in cash?

9 A I don't recall.

10 Q Do you recall whether she was employed?

11 A I don't recall.

12 MR. DURDEN: May I approach, Your Honor?

13 THE COURT: Yes, you may.

14 BY MR. DURDEN:

15 Q Can you identify that document, Mr. Palmer?

16 A Yes. This is an intake form that we use routinely in my
17 office. It just is -- we give to the client when they come in,
18 and while they're out in the lobby, they fill it out with their
19 information.

20 Q Look at page two, please.

21 A Okay.

22 Q Does page two indicate that she paid five thousand
23 dollars cash, correct?

24 A It does.

25 Q And it talks about a reference source, referral source,

1 rather, and that being Ed Rife. Is that Eddie Rife?

2 A Yes.

3 Q You represented him before as well, correct?

4 A Yes.

5 Q I'll get back to that a little later.

6 Go back to page one, if you can, and look at the bottom
7 left portion of that document. And it appears that where it
8 asked whether or not she's employed, employer's name, she puts
9 NA?

10 A Yes.

11 Q Nonapplicable means not working or doesn't apply,
12 correct?

13 A That's how I take it, yes.

14 Q So she came in to pay you five thousand dollars cash.
15 Did she tell you where she got the money from?

16 A If she did, I don't recall.

17 Q And whereas, the funds had already -- well, the first
18 call I believe on the 23rd was a telephone call to your office,
19 correct? Or did she come in that day?

20 A The document is dated the 23rd. That would tell me she
21 was in my office on that date.

22 Q On the 23rd.

23 And do you know when the seizure of the funds occurred?

24 A My recollection is it happened a few days after that,
25 maybe 26, 25.

1 Q So it seems -- I guess, whether it's going to anyone or
2 not, she had I believe a call from the DEA -- or I'm sorry.
3 Strike that.

4 She had been contacted concerning the Pickerington
5 event, correct?

6 A Yes.

7 Q And in the interim before she met you, her home was, you
8 know, seized and they took the funds, correct?

9 A I don't think that was before I met with her.

10 Q I do -- was there another meeting on the 26th?

11 A I believe there was. There was a meeting shortly after
12 this day. If you're talking about the second --

13 Q Yes.

14 A The first on the 23rd I met with her, and then I met
15 with her on the 26th and that would have been after the money
16 was seized, correct.

17 Q All right. She said a lot of things concerning
18 Mr. Ledbetter?

19 A Yes.

20 Q And of main concern that you recall is that she was
21 quite fearful of him?

22 A Yes.

23 Q I'm looking at your exhibit pertaining to your Amicus
24 time sheet, and it talks about the meeting with the prosecutor.
25 But that didn't occur until some two months later, correct?

1 A The meeting with the prosecutor, if memory serves, was
2 July 11.

3 Q There was an attempt -- if you can go back to your
4 Exhibit 84-18. And there was an attempt to schedule meetings
5 throughout June?

6 A Show me where you're --

7 Q You don't have these pages numbered.

8 A I got a numbered copy. No, I don't. Forgive me.

9 THE COURT: Mr. Durden, if it would expedite matters,
10 if you can just approach and point to him particular pages. Or
11 even better, if you could put the pages that you're referring
12 to on the ELMO, Ms. Clark can configure it so that you and
13 Mr. Palmer are looking at the same document. That will
14 eliminate all of the --

15 MR. DURDEN: These were handed to us yesterday.

16 THE COURT: What I'm saying is Ms. Clark can configure
17 that so the only entities observing it are the parties and the
18 witness.

19 MR. DURDEN: I understand. I apologize.

20 BY MR. DURDEN:

21 Q Go to the third page, sir.

22 In looking at the ELMO, page 3, it appears there was a
23 call from Ms. Fyffe?

24 A Yes.

25 Q June 2nd I believe she spoke with Jeffery Linn?

1 A This was a message taken by one of my staff to Jeffery
2 Linn.

3 Q And it was concerning the homicide investigation,
4 correct?

5 A Yes, it was concerning the case, yes.

6 Q And again on June 2nd, the next page, another call from
7 Ms. Fyffe. I apologize. A call from Mr. Linn.

8 A This would have been him returning the call that she
9 placed to the office. So she -- she gave Jeff a message. Jeff
10 returned the call.

11 Q And on June 14th, again, a call from Ms. Fyffe. And
12 again, it reads to Jeffery Linn. Does it indicate whether or
13 not Mr. Linn spoke with her actually?

14 A This is the message. If you look, it says to Jeffery
15 Linn from Crystal Fyffe. And down in -- it says status and
16 that says, please call. That would have been a phone message.

17 Q Taken by Keri Collin?

18 A I can explain that. Keri Collin now works for me. She
19 didn't then. Because of the way the permission in the accounts
20 work on the Amicus software, she would fill in whoever was
21 working at the time. If it was a law clerk or somebody else --
22 it now says Keri Collin. It would have been somebody else at
23 the time.

24 Q And later that same day, same page, Ms. Fyffe called
25 again, correct?

1 A Yes.

2 Q Now, it says to Jeffery Linn, the second, and the status
3 reads spoke. Does that mean Mr. Linn did indeed speak with
4 her?

5 A Yes.

6 Q And he told her that Steven E. Palmer will let her know
7 the status. Again, the question was originally, the Fairfield
8 County homicide detectives were wanting to speak with her at
9 that time?

10 A Yes.

11 Q Same day, one minute later, Ms. Fyffe called again
12 seeking an update?

13 A This is probably Jeff sending me a message to call her.
14 It's only a minute later. I would surmise from this, he hung
15 up, sent me a message to call her.

16 Q We move on three pages to June 17th?

17 A Yes.

18 Q And it appears that Ms. Fyffe called and the message
19 there reads, Do we have a proffer date yet for Crystal?

20 A Yes.

21 Q I assume Ms. Fyffe was calling asking about the proffer
22 date?

23 A Yes.

24 Q Now, you talked about you negotiated a proffer with full
25 immunity. I'll get to that a little later. But that was full

1 immunity before she even met with the detectives?

2 A That didn't occur until the actual meeting day in
3 Fairfield County. But, yes, that eventually happened.

4 Q So let me ask, were you in contact with Fairfield County
5 throughout trying to negotiate the terms of the proffer during
6 this time?

7 A I was in contact with Fairfield County. I was in
8 contact with the Pickerington Police Department. And I would
9 have had communication with a detective out there, and then I
10 would have followed up with Gregg Marx. And we talked about
11 proffering her. As far as negotiating the terms, I think it
12 was pretty standard. I think we would have been assuming she
13 was proffering under typical terms, which she agrees to provide
14 information, they won't promise anything, except they won't use
15 the information against her unless she lies or they can prove
16 she's lying, or they learn information from another source.

17 Q We turn to the next page, July 12th. That appears to be
18 almost a month later, correct?

19 A Yes.

20 Q And that call is from the prosecutor Gregg Marx --

21 A Yes.

22 Q -- to you discussing doing a proffer? Now, do you
23 recall, Mr. Palmer, whether or not you negotiated the terms on
24 that day or some time beforehand?

25 A I don't recall specifically. But it would make sense

1 that we actually talked about a proffer letter and an agreement
2 for her.

3 Q The following page, again, for informational purposes,
4 that you scheduled a meeting at two o'clock on a Thursday,
5 correct, the following page?

6 A Yes.

7 Q So I take it at this point, the seizure of the money had
8 been resolved, nothing more to do there, correct?

9 A Correct.

10 Q So your sole representation of Ms. Fyffe dealt with the
11 proffer?

12 A Yes.

13 Q So let's go into the meeting. She denied any
14 involvement, true?

15 A She denied any involvement in the Rodriccos killing.

16 Q And we are talking about Rodriccos Williams' killing,
17 correct?

18 A Yeah. That's what you're asking me about, yes.

19 Q Because the meeting seemed to go off into issues about
20 other people and other things. But the purpose of this meeting
21 was to talk about Rodriccos Williams?

22 A Which meeting are we talking about?

23 Q The one held on July 14th, 2011.

24 A With the prosecutors?

25 Q Yes.

1 A That was the purpose, yes.

2 Q And did they begin asking questions about other issues
3 as well?

4 A My recollection, it was fairly limited to Mr. Ledbetter
5 and what she knew about Rodriccos and that homicide.

6 Q Okay. She denied disposing of any clothes, correct?

7 A She did, or at least said she didn't recall doing it, or
8 both.

9 Q And so the only thing she acknowledged was the Googling
10 of an address in Pickerington, correct?

11 A Correct.

12 Q So you talked about the word crew.

13 A Yes.

14 Q Yet the crew that she mentioned was different from the
15 crew that you talked about at a later time when you talked
16 about other people?

17 A I don't know that to be true.

18 Q Well, she wasn't present, correct, at this homicide
19 event?

20 A That's right. Well, as far as I know.

21 Q And you don't know otherwise?

22 A I don't know otherwise, no.

23 Q She talked about a crew. She did not give any names of
24 who may have been there because she wasn't there, so she says,
25 correct?

1 A I think she did give me some names. I think in my notes
2 I did write down some names. How she knew they were there, I
3 don't know. I was just writing down what she was telling me.

4 Q I'll get back to that in a moment because you gave --
5 I'll get back to that.

6 You met with her about four hours?

7 A The proffer down in Fairfield County -- there is a
8 notation in my file that the whole thing took four hours,
9 including travel time. It's about an hour down, hour back. So
10 maybe a couple hours there.

11 Q Do you recall taking -- being present at a hearing on
12 December 1st?

13 A Yes.

14 Q And during that time, Mr. Berndt asked a question
15 concerning what crew was there. Do you recall being asked that
16 question?

17 A Not specifically.

18 Q Do you recall mentioning individuals but you didn't know
19 the names that were present at this event?

20 A I don't recall it specifically. But I know my notes
21 indicate that she gave names, but I didn't write down what the
22 names were.

23 Q There were no names given, correct?

24 A In Fairfield County?

25 Q Yes.

1 A No. She gave names and phone numbers.

2 Q Well, she gave names and phone numbers pertaining to a
3 crew that related to Elijah Ledbetter and who he may have hung
4 out with, correct?

5 A Yeah.

6 Q At the end of the meeting, correct?

7 A Towards the end of the meeting, correct.

8 Q But we're talking about the murder in Pickerington. She
9 did not give names of a crew for that event, correct?

10 A Did she name the people that -- I don't recall if she
11 actually did or not. She gave names -- I'm sorry. We're
12 talking about two different things. She gave names, at the
13 end, of these folks Mr. Ledbetter told her to put in her phone.
14 And she gave those names and phone numbers.

15 As far as who was at the Rodriccos homicide, whether she
16 actually mentioned names specifically or not, I don't recall.

17 Q Okay. And back to the phones -- back to the names in
18 the phone, or the people that she claims Mr. Ledbetter put in
19 her phone, you were only able to mention one name, that being
20 Santa Clause, correct?

21 A Yes.

22 Q But isn't it true that she mentioned that name as a
23 person she may call if she needs protection?

24 A That was the purpose that she had that name, yes.

25 Q Thank you. So the only information concerning the

1 homicide is that for the Google search, correct, that she
2 acknowledged she did?

3 A That was part of the information she gave, yes, about
4 the Google search.

5 Q She did share with the investigators that Mr. Ledbetter
6 was into real estate, purchasing real estate, correct?

7 A She did. Well, she said that he was involved in real
8 estate and, therefore, she wasn't necessarily surprised at the
9 time she got the call to look up an address, she didn't think
10 much of it.

11 Q Didn't think much of it.

12 Now, I think I asked you earlier -- and Ms. Fyffe was
13 referred to you by an individual named Ed Rife?

14 A Yes.

15 Q And was there a potential conflict in your office to
16 represent both Ms. Fyffe and Mr. Rife?

17 A I don't believe so.

18 Q Was that issue discussed in your office?

19 A I would have had a conversation with her. I don't
20 recall how she knew Mr. Rife. But, if that came in like that,
21 I would make sure that we didn't have a conflict. So it
22 wouldn't surprise me if I asked her if she knew Ed Rife, how
23 she knew Ed Rife, does she have a problem with us representing
24 him, or if there is a conflict of interest.

25 Q Without asking what that conflict was, I'd like you to

1 refer to your -- do you have your notes up there with you
2 still, handwritten notes, 84-9-21?

3 A Yes.

4 Q Well, not 21. That's not the page, but...

5 A What page are you on?

6 MR. DURDEN: Give me a second, Your Honor.

7 THE COURT: Yes.

8 BY MR. DURDEN:

9 Q Page 24.

10 A Okay. I got page 24.

11 Q And it reads there that client details spun off into
12 details about Eddie?

13 A Okay. Yeah.

14 Q And you asked if client had a problem representing her,
15 correct?

16 A If we had -- if she had a problem with us representing
17 her.

18 Q Because that was a conflict of interest, correct,
19 potentially?

20 A It doesn't say potential conflict of interest. But that
21 would have been the gist of that.

22 Q As lawyers, we know if we don't ask and we got a
23 problem, it may be a potential conflict?

24 A Yes, that would have been the gist of it.

25 Q Mr. Rife pled guilty to drug possession, correct?

1 A He did.

2 MR. DURDEN: Request side-bar, Your Honor, if I may.

3 THE COURT: All right.

4 - - -

5 (The following proceeding was held at side-bar.)

6 THE COURT: Go ahead, Mr. Durden.

7 MR. DURDEN: I'm just trying to be cautious and not go
8 too far with the representation of Mr. Rife concerning his drug
9 dealing and his conviction. But it does -- I want the Court to
10 guide me as to how far I can go because you did make a ruling
11 on that issue as to whether we can ask about the conviction
12 itself, but not the information about --

13 THE COURT: -- the underlying. What about the -- this
14 is going to sound like a facetious retort, and I don't mean it
15 that way. But what about my ruling is unclear? I don't mean
16 it that way, but that's the question.

17 MR. DURDEN: Well, I guess I'll ask the government
18 whether or not it knows if there's any similarity between the
19 representation of Ms. Fyffe and Mr. Rife.

20 MR. DEVILLERS: I don't. I'm not sure why it would be
21 relevant. I just don't know where you're going.

22 MR. DURDEN: He's dealing. She's dealing.

23 MR. DEVILLERS: What's that --

24 MR. DURDEN: He's a dealer and she's a dealer and that
25 issue is going on come up in a moment. I'll bring up another

1 name as well.

2 THE COURT: I think that the rule was fairly clear
3 that you could establish a fact of conviction but not the
4 underlying details, because it's not particularly germane on
5 the issues in this case. And that's it.

6 MR. DURDEN: Okay.

7 THE COURT: All right.

8 MR. DEVILLERS: Are you saying that Mr. Palmer has a
9 conviction?

10 THE COURT: No. He's saying Rife has a conviction.
11 He's not talking about Palmer.

12 (The following proceeding was held in open court.)

13 THE COURT: Mr. Durden, please continue.

14 BY MR. DURDEN:

15 Q Mr. Palmer, on May 23rd, 2011, had your case concluded
16 with Mr. Rife for his drug possession and conviction?

17 A I knew you were going to ask me that, and I don't
18 recall. I don't remember when that case resolved.

19 Q So back to the meeting itself, the -- did it last two
20 hours or four hours, because you billed for four hours?

21 A I billed for four hours including travel time.

22 Q How far was the journey back and forth?

23 A 45 minutes, maybe an hour. So whatever the difference
24 would be.

25 Q Was the meeting interrupted on more than one occasion?

1 A What do you mean interrupted?

2 Q Based upon her crying and --

3 A I think we took a couple of breaks for her where I
4 talked to her, make sure she's all right and stressed to her to
5 tell the truth, whatever it would be. I think there were a few
6 breaks like that.

7 Q And when the meeting ended, you walked outside with her?

8 A Yes.

9 Q And how long did that conversation go on?

10 A Ten minutes maybe, 15 minutes.

11 Q At that time, you indicate you saw a letter?

12 A Yes.

13 Q Which you interpret as a threatening letter to
14 Ms. Fyffe?

15 A Yes.

16 Q Did she throw it in the trash?

17 A I didn't see her throw it in the trash. I don't know, I
18 guess, is the right answer to that.

19 Q Did she share the letter with the homicide investigators
20 at Fairfield?

21 A No.

22 Q Did you ask her why?

23 A She was afraid. I wanted to go in and say, let's go
24 back in, we can talk to them, they're all here, we can show
25 them this letter. We probably even discussed them getting some

1 help or protection for her, if she were that afraid. She
2 wouldn't let me do it.

3 Q That was part of the conversation, getting protection
4 for her, during the meeting with the prosecutor?

5 A I don't know that it was specifically discussed. But it
6 might have been. She was concerned about her safety. And
7 whether she brought up the witness protection program or
8 something like that, that was part of the conversations at some
9 point. Exactly when I don't recall. And I don't know that I
10 would have given much credence to it. We were dealing with
11 state court prosecutors. But she was afraid.

12 Q I asked earlier whether or not the conversation went off
13 to other issues against other individuals. Do you recall
14 whether or not a Mike Fuller's name had been mentioned?

15 A I don't specifically. Might have been.

16 Q Do you recall whether or not Ms. Fyffe acknowledged that
17 she kept money at her mother's residence for Mike Fuller?

18 A I do recall something like that, yes.

19 Q Did that come out during the meeting?

20 A I would have to check my notes. If it's in the notes,
21 it probably did.

22 Q Did that also occur during your meeting in your office
23 on May 26th, 2011?

24 A Again, if it's in my notes, I would say yes.

25 Q You know Mike Fuller to be a drug dealer?

1 A I don't know Mike Fuller one way or another.

2 Q Back to those numbers on the phones. There were many
3 numbers given on the phones of individuals. You only mentioned
4 one today. But the series of numbers given were persons who
5 Ms. Fyffe said -- well, as told by you, that's what she told
6 you, rather, that she could call if she needed protection,
7 correct?

8 A That was why -- her explanation for having them in the
9 phone. She was providing those names because she was -- I
10 mean, they would tell her, look, Mr. Ledbetter is in jail, we
11 got him in custody, you're safe. She said, You don't
12 understand. His people will hurt me. That kind of
13 conversation. Here's the people who will do it. He gave me
14 these phone numbers and names because I can call them because
15 of protection, but here is the people that work with him that
16 I'm afraid of. It was that kind of conversation.

17 Q So as it goes, the names given to her were the result of
18 persons to protect herself, correct?

19 A That was the reason she told me Ledbetter gave her the
20 names.

21 Q And you know in the end, at the end of that meeting with
22 Prosecutor Marx, they did not believe her, correct?

23 A I don't think they did. I think they thought that she
24 knew more about disposing of clothing, or something along those
25 lines, and that Earl Williams had said that she had disposed of

1 clothing. They wanted her to say she helped dispose of
2 clothing. She never said that.

3 Q Can we agree she gave no useful information?

4 A I don't know that I can agree with that. I don't know
5 what was useful to them or not. It wasn't what they wanted to
6 hear.

7 Q The meeting was in 2011. Nothing came as a result of
8 it, correct, by way of an investigation for the Rodriccos
9 Williams killing, correct?

10 A I don't know what they did with it.

11 Q Then let's turn to the contact with Mr. Ledbetter. Had
12 she told the prosecutor that she had been -- had been in
13 contact with Mr. Ledbetter?

14 A I don't think she did.

15 Q She withheld that information, correct?

16 A If she didn't tell them, she withheld it.

17 Q Did she tell you that she had been in contact with
18 Mr. Ledbetter prior to the meeting with the prosecutors?

19 A Not that I recall. She may have said that he was trying
20 to contact her. I would have told her not to have any contact
21 with the guy. If she had contact with him, it would have been
22 against my advice.

23 Q Did she say Mr. Ledbetter had been trying to call her?

24 A I don't recall. Eventually, she did because we had
25 that -- we got messages afterwards. But I don't recall her

1 telling me that in real time before that meeting.

2 Q Well, since you represent criminal defendants, do you
3 know where Mr. Ledbetter may have been housed during this time
4 in May of 2011?

5 A In May of -- I don't know when he was placed in custody.
6 I don't know when he was arrested. Later on, my understanding
7 is he was in jail.

8 Q Franklin County?

9 A I don't know if it was Franklin or Fairfield. I think
10 the case came out of Fairfield County so I'm guessing Fairfield
11 County.

12 Q Have you accepted collect calls from client from jails
13 yourself?

14 A I have.

15 Q Knowing those calls are being recorded?

16 A Yes.

17 Q The point being you have to accept the collect call,
18 correct?

19 A Yeah. I mean, if somebody calls me collect and I don't
20 want -- if I want to talk to them, I have to accept it.

21 Q Did Ms. Fyffe share with you that she accepted the calls
22 of Mr. Ledbetter on more than one occasion?

23 A At some point, I think we knew that. But I don't know
24 that I knew in the middle of the case as I was representing her
25 that that had been going on. I don't know, I guess, is the

1 answer.

2 Q You would agree that's inconsistent of someone who
3 claims to be afraid of another, to take their collect call?

4 A I don't know that I would agree with that.

5 Q Let's talk about visitation.

6 A Okay.

7 Q You visited clients in Franklin County jail yourself?

8 A Yes.

9 Q And you do know there's a log, correct?

10 A Yes.

11 Q A visitation log. And you are aware that Ms. Fyffe
12 visited Mr. Ledbetter on at least one occasion, correct?

13 A Yes.

14 Q Maybe even two, attempted to use a fake ID to get in to
15 see him?

16 A I don't know -- I don't know that personally. I was
17 asked questions about that I think at the last hearing.

18 Q Did Ms. Fyffe tell you she went to see Mr. Ledbetter in
19 jail?

20 A She later told -- after that meeting, I think she told
21 us in a communication with Mr. Linn in my office that she had
22 visited him.

23 Q And I'll ask the same question, sir. Would you consider
24 someone who is afraid of another a reasonable step to go visit
25 them while they're in jail?

1 A Is it reasonable?

2 Q Strike that.

3 Someone who claims to be afraid of another, would they
4 go see them in jail?

5 A They might. I mean, I don't know what her motivation
6 was. If you're asking me was she still afraid, my impression
7 was she was afraid of the guy. And whether she was going to
8 see him to tell him that it's all right, I'm not really
9 cooperating, I'm not telling them anything, whether she was
10 going to see him to give him something to protect herself, or
11 whether she was going to see him for some other reason, I don't
12 know.

13 Q You don't know. So you're speculating, right?

14 A Yeah.

15 Q But the records do indicate she seen him and she told
16 you that, correct?

17 A She told me she had gone to see him after the proffer.

18 Q Now -- and again, I'm going back to the
19 December 1st hearing. Mr. -- Ms. Fyffe, rather, was offered
20 full immunity prior to the meeting, correct?

21 A Correct.

22 Q You negotiated a heck of a deal, didn't you, full
23 immunity no matter what she said?

24 A That was pretty much the deal.

25 Q Still she had nothing to say?

1 A Still she said -- she denied doing anything with the
2 clothing.

3 Q And she even told you that she shared with Mr. Ledbetter
4 that she had nothing to say?

5 A I don't know that she told me that.

6 Q Well, 84-12-, I believe it's 18. You were asked on
7 direct whether or not she --

8 A You mean afterwards?

9 Q Yes.

10 A Yeah, we were told afterwards. We had telephone
11 communication with Jeff Linn where she told Jeff she had gone
12 to see him. His family was asking her to go see him again.

13 Q And she told Mr. Ledbetter she had nothing to say?

14 A Yes.

15 Q So we can reasonably conclude she had nothing to fear,
16 correct?

17 A I can't conclude that.

18 Q You're aware that Ms. Fyffe also wrote letters to
19 Mr. Ledbetter, correct?

20 A I don't think I ever saw any letters.

21 Q Well, did she share with you that she had written him
22 letters as well?

23 A She may have. If it's in my notes --

24 Q Well, I'm asking you.

25 A I don't recall independently, but...

1 Q So again, we've talked about Ms. Fyffe accepting phone
2 calls, visiting Mr. Ledbetter in jail and writing him letters?

3 A Yes.

4 Q That does seem inconsistent with someone who is fearful
5 of their life. Would you agree to that?

6 A Again, I don't know that I can agree with that. She
7 was -- every communication I had with her, she was scared of
8 the man. And what she was telling him outside my communication
9 with her, I don't know. But it seemed genuine to me, when she
10 was telling me that, that she was fearful.

11 Q Okay.

12 A And whatever conclusion you want to draw from the rest
13 of it, I guess it is what it is.

14 Q Let me ask this way. At the conclusion of the meeting
15 with the prosecutor in Fairfield County, they believed
16 Ms. Fyffe misrepresented statements, correct?

17 A They thought that she was holding -- my impression of it
18 just looking at the dynamic of the room, is they thought she
19 was withholding information. They were very -- they wanted her
20 to say she had helped dispose of clothing and other items. She
21 never did. My impression was they didn't believe that.

22 Q So she said no, correct?

23 A She said no.

24 Q And they feel she did?

25 A That was my impression of it, yeah.

1 Q That's a misrepresentation. Would you agree?

2 A I guess if they're right, yes, it would have been a
3 misrepresentation. If they're wrong and she was telling the
4 truth -- I don't know if that statement was true or not. I
5 don't know if she helped dispose of clothing, I guess, is what
6 I'm saying. She always denied it.

7 Q She told you she was fearful of Mr. Ledbetter, yet she
8 continued to write him, received his phone calls and go visit
9 with him?

10 A Yep.

11 Q That omission in and of itself is a form of
12 misrepresentation. Can you agree?

13 A The omission of what?

14 Q Of telling you these are the things she's doing.

15 A She didn't tell me that stuff. And it's information I
16 would have wanted to know. I would be telling all along, don't
17 have any communication with the guy, cut it off completely.

18 Q Actually, you told her not to have communication with
19 him?

20 A No question about it.

21 Q On July 14, 2011?

22 A I probably told her that in July. I probably told her
23 that in May. And I probably told her that in June.

24 Q If I were to represent to you there have been one, two,
25 three, efforts of communications beyond that date, would you

1 consider that an act that you'd advise a client not to do?

2 A Yes.

3 Q Especially of someone who is so fearful of her life?

4 A In this case, it was directly contrary to my advice for
5 her to have contact with the guy.

6 Q Let's turn to the shooting itself, October 19th, 2011.

7 Represent to you that Ms. Fyffe had two phones near her
8 at the time of her death, as well as seventeen hundred and I
9 believe forty-eight dollars in her pocket, correct?

10 A I have no idea.

11 Q Were you told that by others?

12 A No. That's the first I've heard of it.

13 Q And you already acknowledged she had no source of income
14 by way of no employment, correct?

15 A In her form, she said she wasn't employed.

16 Q Was not?

17 A Was not employed, correct.

18 Q And \$1,700 in her pocket and two cell phones. You do
19 criminal defense work, correct?

20 A Yes.

21 Q Is that indicative of someone who is in the drug
22 business?

23 A Could be.

24 Q Now, again, this is October, five months after the
25 arrest of Mr. Ledbetter. Can we agree that Mr. Ledbetter and

1 Mr. Fyffe had no direct contact with each other via him being
2 outside of jail and her being -- living in the community still?

3 A Did she -- did she have any communication with him --

4 Q Direct contact, you know, person to person.

5 A If she visited him in jail -- aside from her visits in
6 jail, I don't think -- I think he was in jail and she was out
7 of jail.

8 Q So it's reasonable to conclude that any activities that
9 Ms. Fyffe may be engaged in during this time really had no
10 bearing on Mr. Ledbetter, correct?

11 A I have no idea.

12 Q I asked you earlier about the conflict of interest. And
13 since we began talking, does it help you recall when Mr. Rife
14 pled guilty to this drug conviction?

15 A I don't know -- I can't recall when he pled guilty. For
16 some reason I think it might have been after that. If I -- I
17 didn't have information from Ms. Fyffe that she was engaged in
18 drug trafficking with Mr. Rife. If I would have had that
19 information, I wouldn't have represented her. Whether she knew
20 something about Mr. Rife, whether she knew the guy or anything,
21 the notes seem to say that, but --

22 Q Yet you asked about a conflict of interest, right?

23 A Yeah. I asked her if she had a problem with us
24 representing her.

25 Q I guess we're not privy to know why, sir.

1 MR. DURDEN: But may I have a minute, Your Honor?
2 Side-bar, Your Honor.

3 - - -

4 (The following proceeding was held at side-bar.)

5 THE COURT: Yes, Mr. Durden.

6 MR. DURDEN: Your Honor, it's my intent to put up on
7 the ELMO and even publish for the jury potential names of
8 individuals who we contend are not associated with the Short
9 North Posse and to make the point of names that were given to
10 Mr. Palmer via Ms. Fyffe. The government -- well --

11 MR. DEVILLERS: I have no problem. We have no problem
12 admitting the entire document. Some of it -- we would like the
13 entire document. We have no problem with the entire document
14 coming into evidence.

15 MR. GATTERDAM: It may have been my issue because I
16 think I said something to Mr. DeVillers. I don't have a
17 problem with them putting up that list because, quite frankly,
18 I was going to do that. But I don't believe that opens the
19 door to the entire document. I was just going to do it for
20 purposes of asking him a question or two so either the jury
21 could see it or --

22 THE COURT: Then you run into 106 issues.

23 MR. GATTERDAM: I understand. If I could simply show
24 it to him. I don't think this entire document is admissible as
25 other evidence that's been testified to. It's notes.

1 THE COURT: Here is my point. You all are the best of
2 the best. So, if you make a strategic decision to produce a
3 part of a document, you know that opens the door for 106
4 concerns. It doesn't mean that 106 will compel the Court to
5 admit the entire document. The purpose of 106 is to prevent
6 someone from putting in a portion of the document, if only that
7 portion would remain -- would be out of context and would lead
8 to a misimpression. If you put in a portion and that portion
9 creates a misimpression because it's taken out of context and
10 you would need other portions of the document to put your
11 portion into context, then 106 interests would be implicated,
12 and I may admit all or another portion of a document.

13 I haven't studied this document. So -- and it's been a
14 while since I think I've seen any of it. I don't know what
15 Mr. Durden is going to put in. I don't know whether
16 Mr. DeVillers will say, Judge, I need the rest of this in so
17 that one portion won't mislead the jury.

18 I just can't say. It's almost, you know, a hypothetical
19 at this point because I don't know what they're going to do.

20 MR. GATTERDAM: That's the reason that I sort of asked
21 for the side-bar because I don't either. And if the entire
22 document is coming in, I do object. If he's simply showing the
23 witness, hey, what's the list, then I don't object.

24 THE COURT: Maybe over the -- I don't know what to
25 suggest. It's a tactical decision that you have to make, and I

1 can't give guidance because I don't have a ripe issue before
2 me. So if there's nothing else -- is there anything else that
3 we need to take up?

4 MR. MEYERS: Your Honor, could I ask we have 45 or 60
5 seconds right here with these defense lawyers instead of asking
6 for a full break?

7 MR. DEVILLERS: You don't want me to stick around?

8 (Defense lawyers conferred at side-bar off the record
9 and out of hearing of the jury.)

10 THE COURT: Are you ready to proceed, Mr. Durden?

11 MR. DURDEN: Yes, Your Honor, I am.

12 THE COURT: Please proceed.

13 BY MR. DURDEN:

14 Q Two follow-ups. You recall during the meeting in your
15 office on May 26th, 2011, that Ms. Fyffe indicated that Earl
16 Williams said that she disposed of clothes, correct?

17 A I don't know if that happened on May 26th, but I do
18 remember her telling me that. Early on, she told me -- at some
19 point, I learned that it was Earl Williams that was accusing
20 her -- had given information to the authorities that she had
21 helped dispose of clothing.

22 Q And she denied that?

23 A Yes.

24 Q She denied it to you as well as during the meeting on
25 July 14th?

1 A Yes.

2 Q I want you to go, then, to your Exhibit 84-9. And thank
3 you for numbering the pages. Page 23?

4 A I don't know that I did. But you're welcome.

5 Q I want you to look at the bottom half of that
6 handwritten document. And is this your writing?

7 A This is Jeff Linn's writing. Page 23 of 84-9?

8 Q Yes, your office notes.

9 A Yes. That's Jeff Linn's writing.

10 Q Do you see it reads, Lead gave several ampersand,
11 numbers, correct?

12 A Yes.

13 Q You mentioned the name Santa Clause, correct?

14 A Yes.

15 Q And a point, I guess, earlier was that these are the
16 numbers to call if she needed help, if she was in trouble,
17 correct?

18 A Let me be clear. I just want to be clear. She told us
19 that Mr. Ledbetter gave her these names to put in her phone for
20 that purpose. But she was giving us these numbers because she
21 was afraid that something could happen to her.

22 Q All right.

23 A And it was both. So...

24 Q And the names given did not include Christopher Harris,
25 correct?

1 A I think that's -- yeah. I don't see his name.

2 Q It did not include Rashad Liston, correct?

3 A Correct.

4 Q It did not include Deounte Ussury, correct?

5 A Correct.

6 Q Nor Clifford Robinson, correct?

7 A Correct.

8 Q You also mentioned a crew before, and that crew
9 pertained to Elijah Ledbetter?

10 A I don't know. I think that was his brother. I don't
11 know if he was the crew she was talking about or -- I can't
12 recall.

13 Q You don't recall any information concerning
14 Mr. Ledbetter being a part of a crew. Isn't that correct?

15 A Elijah Ledbetter?

16 Q No. Brandon Ledbetter.

17 A She said he had a crew. Whether he was part of it, I
18 don't know if that's semantics. But, no, she didn't say -- I
19 don't know.

20 MR. DURDEN: One last topic, and I apologize.

21 May I approach, Your Honor?

22 THE COURT: Yes, you may.

23 BY MR. DURDEN:

24 Q I'm showing you what's marked as Exhibit 84-19. Can you
25 take a moment and read the typewritten portion in the middle,

1 please?

2 A Okay.

3 Q So when you were asked about Ms. Fyffe being shot, you
4 referenced that Mr. Ledbetter had shot her, correct?

5 A That's what she told us.

6 Q Yet this appears to be a preliminary investigative
7 report on January 17th, 2009, for aggravated assault, correct?

8 A Yes.

9 Q Wherein she was questioned by Detective Delbert Chapman?

10 A That's correct.

11 Q And during that time, she stated that a group of M,
12 slash, B - black males - were involved in an argument and that
13 as she got closer to the group she was shot?

14 A Yes.

15 Q And that her boyfriend picked her up?

16 A Yes.

17 Q And took her to the hospital?

18 A Correct.

19 Q Do you know, in fact, that's what she told the police at
20 the hospital, correct?

21 A I don't know.

22 Q And she made application for Social Security
23 Administration giving this circumstance as a basis for an
24 injury as well, correct?

25 A I don't know that.

1 MR. DURDEN: No further questions on direct -- on
2 cross-exam, Your Honor. Thank you.

3 THE COURT: Thank you, Mr. Durden.
4 Mr. Gatterdam.

5 MR. GATTERDAM: May I proceed, Your Honor?

6 THE COURT: Let me -- just a second.

7 MR. GATTERDAM: Sure.

8 THE COURT: Please proceed, Mr. Gatterdam.

9 - - -

10 CROSS-EXAMINATION

11 BY MR. GATTERDAM:

12 Q Mr. Palmer, how are you doing?

13 A I'm doing well. Thank you.

14 Q So just a couple of areas I want to get into with you.
15 So you start representing Ms. Fyffe in 2011 around May,
16 correct?

17 A Yes.

18 Q And it's at that point in time -- at some point in time
19 shortly thereafter that you learn that she was seeing or had
20 seen a person named Robert Brandon Ledbetter, correct?

21 A Yeah. He was discussed in our first meeting.

22 Q So it's at that -- at some point in time in 2011,
23 shortly after your meeting that there's this list that we've
24 been talking about that's given out, or names to put in a
25 phone, correct?

1 A Yes.

2 Q And you made a note of that in your notes that you've
3 talked about, correct?

4 A The one I just looked at was Mr. Linn's notes, but our
5 office notes reflect that, yes.

6 Q So your notes, Mr. Linn's notes, it's in the office
7 file, correct?

8 A Correct.

9 Q As you sit there right now, I bet you can't tell me the
10 names of those people on that list, correct?

11 A I just remember Santa Claus.

12 Q Can you remember all the names that were given to you?

13 A No.

14 Q Would it help to refresh your recollection to take a
15 look at that list?

16 A Sure.

17 Q Okay. And you're going to go old school and take a look
18 at your notes, or I can have the document put up if you'd like?

19 A Whatever you please.

20 Q Why don't we do 84-9-023, please.

21 A I've got it. Old school.

22 Q Old school, see, always prevails. Do you see that list,
23 sir?

24 A I do.

25 Q I know you were asked some questions about that. Could

1 you -- you mentioned Santa Claus. Could you read the other
2 names on that list?

3 A Sure. They're numbered. One, Arod. Two, Ba, B-A.
4 Three, Crazy. There's a parentheses with quote Hen, end quote,
5 parentheses. Four, Lil Darryl, L-I-L Darryl. Five, Mizzle.
6 Six, Santa Claus. Seven, SK.

7 Q And I know you were asked this, but there's no --
8 there's no name of Christopher Harris on that list, correct?

9 A Correct.

10 Q And there's no name of O-Dog on that list either, is
11 there?

12 A Not on that list.

13 Q So were you aware at that point in time -- and when I
14 say that point in time, I'm talking 2011 during your
15 representation -- that Christopher Harris was in prison?

16 A I have no knowledge of that one way or another.

17 Q And obviously, you wouldn't have had any reason to,
18 correct?

19 A Correct.

20 Q I mean, unless you had done other research or whatever
21 and looked it up on the Web site for the DRC, right?
22 Otherwise, you would have no knowledge?

23 A Correct.

24 Q So then, if we could also take a look at 84-9-013.
25 That's going to be 013 in your notes. And you're going to brag

1 and get to it before --

2 A I got it.

3 Q I actually may need to see that.

4 MR. GATTERDAM: Agent Lauber, do you mind highlighting
5 that very bottom part?

6 BY MR. GATTERDAM:

7 Q Do you see the area we're talking about on the screen,
8 Mr. Palmer?

9 A I do.

10 Q Okay. And so at that point in time, there's sort of in
11 the side of that the word Elijah, correct?

12 A Yes.

13 Q And your note, if I'm reading it correctly -- and your
14 penmanship is about as good as mine. It says Brandon's
15 brother; is that correct?

16 A That's brother, yes.

17 Q And what's below that? Is it "hung with these guys"?

18 A Yes.

19 Q Okay. And then it gives two names. And those names
20 are --

21 A It's -- one is Old Dog. The other is Young Buck dash
22 Buckwheat.

23 Q Okay. And you were specifically asked about this. Do
24 you remember testifying in a previous proceeding --

25 A Yes.

1 Q -- involving this matter?

2 And tell me if you believe this is correct what you said
3 on page 55.

4 Mr. Berndt asked you this question: The reference to
5 Old Dog and Buckwheat was in reference to people that
6 Mr. Ledbetter's brother hung out with, correct?

7 Hung out with, comma, correct.

8 And your answer was, That's what the notes said, yes.

9 So that's what this note is in reference to, correct?

10 A Yeah.

11 MR. GATTERDAM: Nothing further.

12 THE COURT: Thank you, Mr. Gatterdam.

13 Ms. Dixon, any questions?

14 - - -

15 CROSS-EXAMINATION

16 BY MS. DIXON:

17 Q Good afternoon, Mr. Palmer.

18 A Good afternoon.

19 Q I believe you testified that you first met with Crystal
20 Fyffe sometime in May of 2011?

21 A Yep.

22 Q And she retained you for two matters, right?

23 A Yes.

24 Q One was some money that she had, right?

25 A Yes, the 30,000.

1 Q And an investigation that she thought she could possibly
2 be a defendant?

3 A Yes.

4 Q And when you -- and you didn't know her prior to that,
5 did you?

6 A No.

7 Q So that was your first meeting with her ever?

8 A Yes.

9 Q Okay. And she got information from you, right? You
10 accepted her as a client? Let me put it that way.

11 A Yeah.

12 Q And in your accepting her as a client, did you talk to
13 her about the issues of confidentiality?

14 A Yes.

15 Q And so -- and as a lawyer, you would let her know
16 whatever she told you was, in fact, confidential, correct?

17 A Yes.

18 Q And no matter what she told you, it was confidential,
19 right?

20 A Yes.

21 Q Of course. And so with that being said, she never told
22 you that she disposed of any clothing, did she?

23 A That is true.

24 Q And so did you believe her?

25 A I don't know that I believed her or not. You know, she

1 stuck to it. I don't know that it was true. I don't know that
2 it wasn't. I don't know -- I don't remember forming a belief
3 about it at all.

4 Q Is it fair or unfair to say that there could have been
5 trust issues between you and your client?

6 A No, that's not true at all.

7 Q You believe she trusted you?

8 A Yes.

9 Q And you trusted her?

10 A She was my client.

11 Q Okay. So when --

12 THE COURT: I'm sorry.

13 Mrs. Evans, could you read back Ms. Dixon's last
14 questions to Mr. Palmer?

15 THE COURT REPORTER: "Question: And you trusted her?

16 "Answer: She was my client."

17 THE COURT: Mr. Palmer, did you understand the
18 question?

19 THE WITNESS: I did. I would be happy to explain what
20 I meant by that answer.

21 THE COURT: You may explain it. But remaining true to
22 my gatekeeping function for this jury, I want to make sure that
23 the record is clear that the questions are responsively
24 answered. That answer was unresponsive.

25 Could you first answer the question? And if you feel

1 the need to explain your answer, you may do so.

2 First answer it.

3 THE WITNESS: I guess I was -- I trusted her as my
4 client. I don't know that I would have trusted her outside
5 that realm. That's what I meant by that.

6 BY MS. DIXON:

7 Q And so you also mentioned several times what they wanted
8 to hear from her with respect to her tampering with evidence or
9 destroying clothing, correct?

10 A Yes.

11 Q And who is "they"?

12 A I was referencing Gregg Marx and the detective from the
13 Pickerington Police Department.

14 Q So it is a particular thing that the police wanted to
15 hear from her, right?

16 A By "want," I mean, they wanted her -- I guess "want" is
17 the word I'm using, yes. They wanted her to say she disposed
18 of clothing. They wanted her to corroborate with what
19 Mr. Williams was saying, and she never did.

20 Q So they had already made up in their mind that she had
21 destroyed clothing?

22 A I don't know if they had concluded that or they were
23 trying to corroborate something. I don't know.

24 Q So it's either one of the two. Either they believed it,
25 or they were trying to corroborate what someone else had said?

1 A I don't know what they were thinking exactly, whether it
2 was one of those two or some other option.

3 Q And you don't -- all you know is that even with the
4 confidentiality that she has with you, she maintained -- never
5 did that, right?

6 A Correct.

7 Q And even with them offering her immunity, never said she
8 did that, right?

9 A Correct.

10 Q She maintained. She was steadfast, "I did not do that,"
11 correct?

12 A Correct.

13 Q And any list that she provided to you would be based on
14 her getting a list, you said, from somebody else?

15 A The list of names with telephone numbers we referenced
16 earlier was those -- that information, those names and phone
17 numbers, she advised, were given to her by Mr. Ledbetter.

18 MS. DIXON: Nothing further. Well, one second.

19 Nothing further.

20 THE COURT: Thank you, Ms. Dixon.

21 MR. MEYERS: Briefly.

22 THE COURT: Mr. Meyers.

23

24

25

- - -

CROSS-EXAMINATION

BY MR. MEYERS:

Q Good afternoon.

A Good afternoon.

Q I can't pass up the chance to question a fellow lawyer.

A It's thrilling.

Q A couple of questions about the dynamic in the proffer meeting with Prosecutor Marx and the lead detective?

A Okay.

Q The lead detective on the Rodriccos Williams homicide, correct?

Whatever they were thinking, is it fair to say that based on their questions to you and, more critically, to Ms. Fyffe, they took the position that Earl Williams correctly accused her of having a dirty hand in that homicide by way of destroying clothes?

A I felt that they believe that she had done that.

Q And you understood that their belief of that information derived from a guy named Earl Williams?

A Correct.

Q So either they were right or they were wrong, right? You know, either Earl Williams is a truth teller or he's not a truth teller. But they wanted her -- did it give you the feeling in that session -- I think you said they wanted her to

1 say she disposed of the clothes and at the end of the meeting
2 it wasn't what they wanted to hear?

3 A Yes.

4 Q And they clearly telegraphed to your client what they
5 wanted to hear from her?

6 A They asked her if she disposed of clothing. She denied
7 it. She said she didn't, and then at one point she said she
8 didn't recall. They said they had that information, and she
9 still denied it. That's the dynamic.

10 Q They were putting a lot of pressure on her?

11 A There was some pressure on her, yeah.

12 Q And emotionality rooted in who knows what. You
13 described her assertion of fear. It got to the point where
14 you, as her guardian, her lawyer, you protected her. You
15 called a stop to the meeting?

16 A Yes.

17 MR. MEYERS: Nothing further. Thank you.

18 THE COURT: Thank you, Mr. Meyers.

19 Mr. Nolder, anything else?

20 MR. NOLDER: I will pass on the opportunity.

21 THE COURT: Mr. DeVillers, any redirect?

22 MR. DEVILLERS: Yes, Your Honor.

23

24

25

- - -

REDIRECT EXAMINATION

BY MR. DEVILLERS:

Q Mr. Palmer, I believe that Mr. Durden asked you initially about a summary that you gave when you talked to the police when you first learned about Ms. Fyffe's murder?

A Yes.

Q Do you recall the very first thing you told Detective Porter when he informed you that Ms. Fyffe was dead?

A I don't recall specifically.

Q Would something refresh your recollection?

A It would.

Q May I approach with --

THE COURT: Would you do me this one courtesy and ask him what would refresh your recollection, Mr. Palmer?

THE WITNESS: The report I reviewed earlier when I was questioned.

THE COURT: Would you provide him with the report, please, Mr. DeVillers?

THE WITNESS: Okay.

BY MR. DEVILLERS:

Q Did that refresh your recollection?

A It did.

Q Do you recall the very first thing you said to Mr. Porter when you learned that Ms. Fyffe was dead?

1 A Quote, she told me this was going to happen.

2 Q I'm sorry?

3 A She told me this was going to happen.

4 Q That's what you told Detective Porter?

5 A Yes.

6 Q You were asked questions, I believe in a way, if
7 Ms. Fyffe was involved in the drug trade of some sort?

8 A Yes.

9 Q Do you recall being asked that?

10 Did Ms. Fyffe tell you about anything in regards to
11 working with Mr. Ledbetter in the drug trade?

12 A She mentioned at one point that she had assisted him in
13 loading up a trunk of a car, and she felt that that was
14 probably narcotics or some other contraband. And she never --
15 she never told me she was dealing drugs. She never told me she
16 was dealing drugs with Mr. Rife. She never told me she was
17 engaged in narcotics trafficking, and I never got that
18 impression.

19 Q Are you aware of any medical condition that Ms. Fyffe
20 had?

21 A Yes, but I can't recall what it is. I think she had
22 epilepsy.

23 Q All right. I'll be perfectly clear about this. You
24 indicated on cross-examination that the one list, the list of
25 the names with the phone numbers, was given to Ms. Fyffe by

1 Mr. Ledbetter for the purposes of if she ever needed anything?

2 A Yes.

3 Q What was the purpose of Ms. Fyffe giving that to you and
4 the prosecutors from Licking County, or Fairfield County?

5 A Fairfield County.

6 MR. DURDEN: Objection. Speculation.

7 MR. DEVILLERS: I can rephrase.

8 THE COURT: I don't know that the question as phrased
9 calls for speculation given that the witness has testified he
10 was her attorney, he counseled her. And in the context of him
11 counseling her, he could very well have gathered this
12 information. So given the context of that relationship, I
13 think that -- and the -- I think that Mr. DeVillers' question
14 is proper as phrased.

15 Your objection, Mr. Durden, is therefore overruled.

16 You may answer, Mr. Palmer.

17 THE WITNESS: Thank you. I forgot your question.

18 Mrs. Evans, you may read it back.

19 (Thereupon, the last question was read by the court
20 reporter.)

21 THE WITNESS: These were the guys that she was afraid
22 of. These were the guys that she said even though
23 Mr. Ledbetter is in jail, these are the guys that could hurt
24 her. These are his people.
25

1 BY MR. DEVILLERS:

2 Q You were also asked on cross-examination about O-Dog
3 and/or Old Dog and Buck or Buckwheat. Do you recall being
4 asked about that?

5 A Yes.

6 Q What did Ms. Fyffe say about Buckwheat and O-Dog?

7 MR. GATTERDAM: Objection. Asked and answered.

8 THE COURT: Overruled.

9 THE WITNESS: The notes I looked at said these were
10 the guys that hung around Elijah. There may be other notes
11 before that to explain why I was into that area with her. I
12 don't know.

13 BY MR. DEVILLERS:

14 Q Did you talk to the FBI in 2013?

15 A Yes.

16 Q Do you recall talking to them about O-Dog and Buckwheat?

17 A Not specifically.

18 Q Would anything refresh your recollection as to that?

19 A Any summaries or notes that the FBI might have generated
20 would probably refresh my recollection.

21 MR. DEVILLERS: May I approach, Your Honor?

22 THE COURT: Yes, you may.

23 BY MR. DEVILLERS:

24 Q Direct your attention to this paragraph and this
25 paragraph. Just read those to yourself.

1 A Okay.

2 Q Do you recall what you told the FBI in regards to O-Dog,
3 Buckwheat and Elijah in that time period?

4 A Yes.

5 Q What did you tell them?

6 A She said Ledbetter told her if anybody ever messed with
7 her to talk to O-Dog or Buckwheat, I guess, for help, or for
8 whatever purpose.

9 Q Did he go on to say anything about Elijah?

10 A Elijah had been killed. And the person -- the person
11 who killed Elijah was known as FNU aka Aver.

12 Q Anything else about Elijah?

13 A Just that Fyffe advised that Elijah Ledbetter, Brandon
14 Ledbetter's brother, hung out with those guys.

15 Q Okay.

16 MR. DEVILLERS: May I approach, Your Honor?

17 THE COURT: Yes.

18 BY MR. DEVILLERS:

19 Q And you were asked if you would agree that -- exact
20 quote, can we say that she gave no useful information, that was
21 in regards to the proffer in July with the prosecutors. Do you
22 remember being asked that question?

23 A Yes.

24 Q What did she indicate in regards to Googling?

25 A She said that she recalled getting a text or a call from

1 Ledbetter and asking her to Google an address and look it up
2 and give directions, and that later on that rung a bell with
3 her because she got news that a homicide had happened at that
4 same address.

5 Q Did she tell that to the prosecutors back in July?

6 A Yes.

7 MR. DEVILLERS: No further questions, Your Honor.

8 THE COURT: Thank you.

9 Mr. Durden, any additional -- any recross?

10 MR. DURDEN: A few, Your Honor.

11 - - -

12 RECROSS-EXAMINATION

13 BY MR. DURDEN:

14 Q Mr. Palmer, you were asked on redirect about the
15 conditions of Ms. Fyffe. I'm going to refer you back to your
16 office notes. 84-9 page 18. Take a moment and read the
17 paragraph there, please. Let me know when you're ready.

18 A Okay.

19 Q Again, the question asked whether or not she was -- what
20 conditions did she have. You mentioned epilepsy. She was also
21 diagnosed with depression?

22 A Yes.

23 Q And other conditions, correct?

24 A My memo said she is medicated for depression and other
25 conditions.

1 Q Do you know if she was on a psychotropic medication as
2 well, Neurontin?

3 A I didn't know what drugs she was taking.

4 MR. DURDEN: May I approach the witness?

5 THE COURT: Yes, you may.

6 BY MR. DURDEN:

7 Q Can I see the document Mr. DeVillers gave you?

8 A This one?

9 Q Yes.

10 So despite, you said, She told me this was going to
11 happen, you acknowledge you have no direct information
12 concerning Crystal Fyffe's murder, correct?

13 A Correct.

14 Q And your statement was, when asked if you trust her, you
15 stated that, well, not on other realms; on your case only, but
16 not on outside realms?

17 A I said I didn't know. I didn't have an opportunity to
18 engage in a trust relationship with her beyond being her
19 attorney. So I don't know really what that question meant.
20 But as a client, I trusted her. I didn't deal with her in any
21 other way, shape or form.

22 Q Would it have made a difference in your representation
23 whether you trusted her or not, then?

24 A I don't know. I mean --

25 Q Your last contact with her was on or about August 4th,

1 2011?

2 A That sounds about right.

3 MR. DURDEN: Thank you. No further questions, Your
4 Honor.

5 THE COURT: Thank you, Mr. Durden.

6 Mr. Gatterdam, any recross?

7 MR. GATTERDAM: Yes, Your Honor.

8 - - -

9 RECROSS-EXAMINATION

10 BY MR. GATTERDAM:

11 Q Mr. Palmer, did you say on redirect that this list of
12 names that we've been talking about that was given to Fairfield
13 County are -- were guys that Crystal was afraid of, guys that
14 could hurt her? Did I write that down right?

15 A Yes.

16 MR. GATTERDAM: Agent Lauber, can we have
17 161-36.02-004? If you could highlight the very -- 004.

18 Towards the bottom, the very last paragraph, Ledbetter
19 gave Fyffe the following, if you could highlight that. Thank
20 you.

21 BY MR. GATTERDAM:

22 Q When you were asked -- you talked before about doing an
23 interview with the -- with Mr. DeVillers and some agents,
24 correct?

25 A Yes.

1 Q And I assume you saw they were taking notes of the
2 conversation, correct?

3 A Yes.

4 Q And then what did they indicate you said regarding that
5 list?

6 A It says there, Ledbetter gave Fyffe the following phone
7 numbers of persons that Ledbetter ran with.

8 Q Do you have any reason to doubt that they wrote down
9 what they believed you said on that date?

10 A No.

11 Q Now, you were asked on redirect whether or not -- these
12 names of people, if anyone ever messed with her. Do you recall
13 that? And you said the names O-Dog is one of the names,
14 correct?

15 A Yes.

16 Q And again, these were names that were given to you in
17 2011 when you were representing her, correct --

18 A Yes.

19 Q -- Ms. Fyffe?

20 So, if somebody was in prison in 2011 and had been there
21 for three years, they're not somebody that was capable of
22 messing with her, correct?

23 A I guess not, not directly, no.

24 Q And again, you were never given any information about
25 Christopher Harris being in prison, correct?

1 A Not that I recall.

2 Q And you're not aware of whether there's a person who was
3 on the streets in 2011 who had a nickname O-Dog, correct?

4 A That's correct.

5 Q In fact, based on what Ms. Fyffe was telling you, that's
6 what you believed, that there was somebody out there that she
7 could call if somebody messed with her, and that person's name
8 was O-Dog?

9 A That's what she said.

10 Q And she never shared with you that person's real name,
11 correct?

12 A I don't recall. It's not in my notes. Probably not.

13 Q And you didn't get a phone number or anything like that.
14 That was not your concern, correct?

15 A I didn't get a phone number.

16 MR. GATTERDAM: Nothing further.

17 THE COURT: All right. Thank you.

18 Ms. Dixon, any recross?

19 - - -

20 RECROSS-EXAMINATION

21 BY MS. DIXON:

22 Q Mr. Palmer, pretty much the same thing. When Ms. Fyffe
23 gave you that name of -- that you testified about in the
24 notes -- when you expanded on it when you spoke with I think
25 the FBI in 2013, if anybody ever messed with her that she could

1 call -- and I think Mr. Gatterdam just questioned you about
2 O-Dog. So the other name you told them in 2013 was Young Buck
3 or Buckwheat, right --

4 A Yes.

5 Q -- if somebody ever messed with her?

6 Along the same lines, if Rashad Liston were incarcerated
7 in 2011, certainly that wouldn't be a person she could call on
8 to help her on the outside if somebody messed with her,
9 correct?

10 A Is that Buckwheat?

11 Q Pardon me?

12 A What was the name?

13 Q I said if Rashad Liston, which is my client, if he were
14 incarcerated in 2011, he would not be a person who could assist
15 her or help her if somebody messed with her, right?

16 A Correct.

17 Q Okay. And your testimony, all of it, is pretty much
18 what Crystal Fyffe told you, right?

19 A A lot of it, yes.

20 Q I mean, in other words, you never did any independent
21 investigation to verify what she told you was correct?

22 A Correct.

23 MS. DIXON: Thank you.

24 THE COURT: Mr. Meyers?

25 MR. MEYERS: No questions.

1 MR. NOLDER: No questions.

2 THE COURT: Any sur-redirect, Mr. DeVillers?

3 MR. DEVILLERS: Yes, Your Honor.

4 THE COURT: Of course. I mean, of course come
5 forward.

6 MR. DEVILLERS: I'm sure, Your Honor.

7 - - -

8 FURTHER REDIRECT EXAMINATION

9 BY MR. DEVILLERS:

10 Q You were asked about Government's Exhibit 161-36.02. I
11 believe I want page four. You were asked specifically about
12 this document on cross-examination. Do you recall that?

13 A Yes.

14 Q And the first paragraph that you can see there, do you
15 recall what you told the -- can you read that?

16 Do you recall what you told the FBI in regards to what
17 Ms. Fyffe repeatedly told you?

18 A She repeatedly told me that Ledbetter would have her
19 killed, and she gave me a list of names of who Ledbetter would
20 have on the outside to actually kill her.

21 Q And were the names O-Dog or Young Buck or Buckwheat on
22 that list?

23 A Yes.

24 Q You were also asked in regards to whether someone who
25 was in prison in 2011 could either assist or do harm to

1 Ms. Fyffe. Do you remember being asked that?

2 A Yes.

3 Q Do you know a person by the name of Steven Austin?

4 A No.

5 MR. DEVILLERS: No further questions, Your Honor.

6 THE COURT: Mr. Durden?

7 MR. DURDEN: Yes.

8 - - -

9 FURTHER RECROSS-EXAMINATION

10 BY MR. DURDEN:

11 Q Mr. Palmer, the two names listed of O-Dog, Chris Harris,
12 Buckwheat, did she also share with you they were already in
13 prison and had been in prison for at least three years?

14 A I don't recall. I don't know.

15 Q We can agree that being locked up, they're unable to
16 make direct contact with Ms. Fyffe, correct?

17 A Correct.

18 MR. DURDEN: Thank you. No further questions.

19 THE COURT: Mr. Gatterdam.

20 - - -

21 FURTHER RECROSS-EXAMINATION

22 BY MR. GATTERDAM:

23 Q You answered on recross that somebody who is in prison
24 you can't call to have them help if somebody messed with you.
25 Similarly, they're not going to -- if they're locked up for 17

1 years, they're not going to be able to do harm to you, just as
2 they're not able to help you, correct?

3 A Right.

4 Q Okay. And again, I'm going to -- I asked you about this
5 on cross before, but do you remember you testified at a
6 previous proceeding and you were asked the specific question
7 about these names, Old Dog -- and by the way, it was Old Dog
8 that you said, correct, previously, not O-Dog?

9 A I don't know if I said O-Dog or Old Dog.

10 Q You said something that Mr. DeVillers had you read that
11 had a different name, Old Dog. But the record is what it is.
12 You were asked how did those names Old Dog and Buckwheat come
13 up. Do you remember that?

14 A Yes.

15 Q And correct me if I'm wrong, you were asked the
16 question: The reference to Old Dog and Buckwheat was in
17 reference to people that Mr. Ledbetter's brother hung out with,
18 correct?

19 MR. DEVILLERS: Objection. Asked and answered.

20 MR. GATTERDAM: Responsive to his re-redirect.

21 THE COURT: Yes. I'm going to overrule it. You may
22 answer, Mr. Palmer.

23 BY MR. GATTERDAM:

24 Q Do you recall that?

25 A I do.

1 Q And your answer said --

2 MR. DEVILLERS: I'm just not sure what we're going off
3 of. Is it a transcript of --

4 THE COURT: You don't know what he's reading from?

5 MR. DEVILLERS: Exactly.

6 MR. GATTERDAM: Pages 55 and 56 of the hearing dated
7 December 1, 2015.

8 MR. DEVILLERS: Thank you.

9 MR. GATTERDAM: May I just ask the question again?

10 THE COURT: It's your preference, but for ease of
11 convenience, the ELMO would show all counsel and the witness
12 what you're reading from. And they could -- that might
13 eliminate some of the issues.

14 BY MR. GATTERDAM:

15 Q Mr. Palmer, can you see on the ELMO the question that I
16 started to ask you?

17 A Yes.

18 Q Can you read what that question is?

19 A The question is: The reference to Old Dog and Buckwheat
20 was in reference to people that Mr. Ledbetter's brother hung
21 out with, correct?

22 Q If I flip to page 56, can you tell me what your answer
23 was?

24 A That's what the note says, yes.

25 MR. GATTERDAM: Thank you. Nothing further.

1 THE COURT: Ms. Dixon?

2 MS. DIXON: Can I have 161-32.02, page 4 -- 36?

3 - - -

4 FURTHER RECROSS-EXAMINATION

5 BY MS. DIXON:

6 Q Mr. Palmer, you see that paragraph, right?

7 A Yes.

8 Q That's highlighted? And you testified about that on
9 redirect, right?

10 A Yes.

11 Q And the names that -- and this is from your interview in
12 2013, right?

13 A Yes.

14 Q And the names that you gave of -- supposedly from
15 Ledbetter who would be on the outside, right?

16 If you look at the first sentence, does it not say,
17 "Fyffe gave Palmer a list of names who Ledbetter would have on
18 the outside to actually kill her," right?

19 A That's what it says.

20 Q Those names were O-Dog, in parentheses, Christopher
21 Harris aka O-Dog, or Young Buck aka Buckwheat, Rashad Liston
22 aka Young Buck aka Buckwheat, correct?

23 A Yes.

24 Q So those were names of people who were actually on the
25 outside, right, as far as she told you?

1 A I don't know.

2 Q That's what that says, right, that you told them?

3 A That's what it says I told them.

4 MS. DIXON: Okay. Thank you.

5 THE COURT: Mr. Meyers?

6 MR. MEYERS: I'll gave it to Mr. Nolder.

7 THE COURT: Mr. Nolder?

8 MR. NOLDER: I will pass, Your Honor.

9 THE COURT: And Mr. DeVillers?

10 MR. DEVILLERS: Nothing, Your Honor.

11 THE COURT: Mr. Palmer, thank you very much, sir. You
12 may be excused.

13 THE WITNESS: Thank you.

14 THE COURT: Ladies and gentlemen, it's just a skosh
15 past 12:30. So we're going to stand in recess now for lunch
16 until 1:30. Enjoy that rarest of commodities: sunshine. And
17 enjoy your lunch.

18 (Jury out at 12:36.)

19 THE COURT: Mr. DeVillers, anything further from the
20 government before we break?

21 MR. DEVILLERS: No, Your Honor.

22 THE COURT: Mr. Berndt?

23 MR. BERNDT: No, Your Honor. Thank you.

24 THE COURT: Mr. Gatterdam?

25 MR. GATTERDAM: No, Your Honor.

1 THE COURT: Ms. Dixon?

2 MS. DIXON: No, sir.

3 THE COURT: Mr. McVay?

4 MR. MCVAY: No, Your Honor.

5 THE COURT: Mr. Nolder, anything?

6 MR. NOLDER: Nothing.

7 THE COURT: Enjoy your lunch, everyone.

8 (Lunch recess taken from 12:34 p.m. to 1:30 p.m.)

9 - - -

10 WEDNESDAY AFTERNOON SESSION

11 MAY 18, 2016

12 - - -

13 (Thereupon, the following proceeding was held in chambers
14 with all counsel present:)

15 THE COURT: Ms. Clark, would you bring the juror in,
16 please.

17 (Juror #10 was seated in the conference room.)

18 JUROR #10: Yes, sir.

19 THE COURT: Have a seat. This is, as they say, a well
20 visit.

21 We're scheduling the next couple weeks, and I'm going to
22 address the entire jury on the scheduling matter, but we made a
23 promise to you that you would be out of here next Thursday, by
24 1:00, for your daughter -- or is it Thursday after next?

25 JUROR #10: It's the Thursday after next, June 2nd.

1 THE COURT: June 2nd.

2 -- we would have you out by -- you need to be out by
3 1:00 to make your daughter's high school graduation.

4 JUROR #10: I think it was noon.

5 THE COURT: Okay, noon.

6 JUROR #10: Unless you're going to drive me from here
7 to there.

8 THE COURT: No. There is an e-mail that I got from
9 Fran Green that said he had to be released no later than 1:00,
10 but noon is fine.

11 JUROR #10: Right, noon. Thank you.

12 THE COURT: But my question to you --

13 JUROR #10: Yes, sir.

14 THE COURT: -- is whether it was a closed-end period,
15 sort of like noon to 2:00 or 3:00 and then you would be
16 available after that, or you had activities in connection with
17 the graduation schedule after that. Whichever is fine, but I
18 just needed to know so that we could schedule around it.

19 JUROR #10: Let's see. Graduation is 2:00.

20 THE COURT: Okay.

21 JUROR #10: Dinner reservations are at 5:00.

22 THE COURT: You've answered my question. All right.

23 JUROR #10: If you guys want to meet me at Tony's --

24 THE COURT: You don't know these lawyers and their
25 ferocious appetites.

1 What we will do, then, is, we will end that day at noon.

2 JUROR #10: Thank you.

3 THE COURT: And then resume either the Friday or
4 Monday. But that's all we needed. Thank you very much.

5 JUROR #10: Thank you very much.

6 (Whereupon, Juror #10 exits the conference room.)

7 THE COURT: Okay. So we'll further refine our
8 schedule after the proceedings today, but we know now that, on
9 June 2nd, we'll be ending at noon.

10 MR. KELLEY: If I could throw out, somewhere we have
11 to put in some time for all counsel to review the exhibits that
12 go to the jury. Right now, we're starting with about 30
13 volumes. Maybe that's a little high, but at least 25 volumes.
14 And they have to be culled, and we all then have to agree that
15 this is what goes to the jury. And so that's going to be a bit
16 lengthy.

17 THE COURT: And what I typically do is, I have -- I
18 get representatives from each side to sit down together and
19 just go through, with Mrs. -- First, you all go through your
20 list. And then you make sure that your list is harmonized with
21 the official list that Ms. Clark has maintained throughout the
22 trial. And then we'll get all of those together so we can be
23 running, Kevin, on parallel tracks.

24 MR. KELLEY: My only concern, Your Honor -- I'm going
25 to make the defense counsel sit with us and look at those

1 books. I've had bad things get in there by accident. I want
2 it to be an accident we all make.

3 THE COURT: That's what I'm saying. Representatives
4 from all parties, is what I really meant --

5 MR. KELLEY: Yes, Your Honor.

6 THE COURT: -- to sit down and go through it. And so
7 once we get a list that is agreed to by all of the parties,
8 then, you know, a couple of representatives, one from the
9 government and one from the defense, can sit down with Ms.
10 Clark and make sure that the lists are together so that we
11 don't have to do that after the jury is charged and they're
12 waiting there for several hours to get the exhibits. Okay.

13 The other thing I was going to raise with you, I haven't
14 called them back, but we have been contacted -- chambers has
15 been contacted by the press to ask what happened to the juror
16 who was excused. The public has a right to know. It's one of
17 those things I hate having that conversation because, you know,
18 it gets out in the press, and then it takes on a life of its
19 own. So I'm going to avoid returning that call as long as I
20 can, but I'm open to any suggestions that anyone might have as
21 to how best to answer that question.

22 MR. DEVILLERS: Avoiding is the best.

23 MR. MEYERS: Duck and cover.

24 MR. MILLER: Judge, Steve and I were downstairs at the
25 men's room and the *Dispatch* editor, writer, came by and asked

1 us what happened. I said we weren't there, we don't really
2 know what happened, he has been napping before, it might have
3 something to do with it, we have no idea.

4 Maybe we shouldn't have said that.

5 THE COURT: That's just as good.

6 MR. NOLDER: He said that -- he said the guy was
7 sleeping a lot. The reporter said that.

8 THE COURT: The problem is throwing the juror under
9 the bus. And that's what I really --

10 MR. DURDEN: Can we indicate, Your Honor, unknown
11 family commitments at this time?

12 MS. DIXON: No.

13 THE COURT: I don't want to do that because I'm not
14 sure that that's correct.

15 MR. DURDEN: He didn't get enough sleep at home.
16 So --

17 MR. McVAY: In light of the fact he's been ordered not
18 to discuss anything until the verdict is returned, shouldn't we
19 be held to the same standard?

20 THE COURT: That's probably as good a response as
21 possible, except for the public right to know.

22 (Thereupon, the following proceeding was held in open court
23 with all defendants and counsel present.)

24 (Jury in.)

25 THE COURT: Ladies and gentlemen, just so you know, we

1 did bring Juror #10 back for the purpose of finalizing some
2 aspects of our schedule, which we've been working on over the
3 last couple of days. It looks like the government's case in
4 chief may conclude late next week. The defense case in chief
5 may conclude the week after. On Monday of that week, we'll be
6 off, because that's Memorial Day. But the following Tuesday
7 and Wednesday, we may see the conclusion of the defense case in
8 chief. And, on that Thursday, the 2nd, we're only going to
9 work until noon.

10 So what we're doing is, we're working on a schedule so
11 that we can let you know when you can expect closing arguments
12 and to receive the case for your deliberation for your planning
13 purposes, but we no longer believe that the case will go into
14 the third week of June. We believe, instead, that you may get
15 the case sometime during that first week of June. It may spill
16 into the second week, with completion of closing arguments
17 and/or your deliberations, but we are meeting on that in the
18 evenings to finalize things. And we meet in the evenings
19 because, after some of the witnesses have concluded, that gives
20 us an idea of how much more time we're going to take.

21 So, I wanted you to be aware of that. But, you know,
22 you will certainly get the case within the first two weeks of
23 June. All right.

24 Mr. Devillers, your next witness.

25 MR. DEVILLERS: Your Honor, the government's next

1 witness is Timothy Duerr.

2 COURTROOM DEPUTY CLERK: Sir, come forward to be
3 sworn, please.

4 (Witness sworn.)

5 COURTROOM DEPUTY CLERK: Please be seated, sir.

6 THE COURT: Mr. Duerr, please bend the microphone
7 towards you and speak clearly into it. Thank you.

8 Mr. Devillers, please proceed.

9 MR. DEVILLERS: Thank you, Your Honor.

10 - - -

11 TIMOTHY DUERR

12 Called as a witness on behalf of the Plaintiff,
13 being first duly sworn, testified as follows:

14 - - -

15 DIRECT EXAMINATION

16 BY MR. DEVILLERS:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Please state your full name, and spell your last name.

20 A Timothy Scott Duerr. Last name is spelled D-U-E-R-R.

21 Q What do you do for a living, sir?

22 A I'm employed with the Miami Valley Regional Crime
23 Laboratory in Dayton, Ohio, as a laboratory supervisor and a
24 firearms and took mark identification person.

25 Q Do you know a person by the name of Mark Hardy?

1 A Yes. He's an examiner for the Columbus P.D. Lab.

2 Q Do you have a similar occupation?

3 A Yes. In fact, we've been to training together.

4 Q Well, tell us about your education and experience and
5 training to become -- to do what you do.

6 A I have a bachelor of science degree from Bowling Green
7 State University, with a major in biology and a minor in
8 chemistry. I have one year prior service with the Ohio Bureau
9 of Criminal Identification and Investigation at the Richfield
10 branch lab as a forensic chemist.

11 I came to this laboratory in the winter of 1988 as a
12 chemist. In the fall of 1991, I began my training as a firearm
13 and tool mark examiner under the two firearm examiners at the
14 time. Some of the training consisted of visiting different
15 laboratories, viewing ammunition, thousands of cartridge case
16 comparisons, along with becoming a member of AFTE, which I have
17 attended some of their seminar classes, and along with other
18 course work, such as gunshot residue distance determination.

19 Q Is your crime laboratory a private or public laboratory?

20 A We are actually a regional laboratory. We receive our
21 funding from the local law enforcement agencies that we
22 service. However, our benefits and everything come through
23 Montgomery County.

24 Q Montgomery County, the government?

25 A Yes.

1 Q Okay. Do you often work with Franklin County crimes?

2 A This was a different circumstance. We agreed -- Our
3 laboratory contracted, or they contracted with us, to provide
4 services to assist with the backlog of cases they had at the
5 time.

6 Q Can you tell us have you ever testified before in the
7 area of tool mark identification?

8 A Yes, I have.

9 Q And how many times do you think you've testified?

10 A Well in excess of 150 times in Municipals, Common Pleas
11 and Federal Court in Dayton.

12 Q I want to show you what's been marked as Government's
13 Exhibit 31-5. Do you see that on the screen, sir?

14 A Yes.

15 Q What is this?

16 A This is a laboratory report from our laboratory.

17 Q Okay. And are you a part of this report?

18 A Yes. This appears to be a copy of my report.

19 Q Let's go to, actually, the last page, which would be
20 31-5-006. Do you see that, sir?

21 A Yes.

22 Q And what is that?

23 A That's my electronic signature for this report.

24 Q Now, please go back to Government's Exhibit 31-5. And I
25 want to take you back to -- I believe it was December, December

1 of 2007. Were you asked to do some things for the City of
2 Columbus Division of Police?

3 A Yes. It was a firearms comparison case.

4 Q Do you remember how many firearms you were asked to
5 compare?

6 A I would have to count the ones in the report. We did
7 numerous cases for them. There were several on this case, in
8 particular.

9 Q All right. I don't want to ask you about all of the
10 firearms and shell casings, but I do want to be direct your
11 attention to Submission 11.

12 MR. DEVILLERS: And if you could highlight that.

13 BY MR. DEVILLERS:

14 Q Do you see that, sir?

15 A Yes.

16 Q What is Submission 11?

17 A It was a cardboard box containing one Smith & Wesson
18 Model SW40F .40-caliber semi-automatic pistol.

19 Q I'm going to hand you what's been marked --

20 MR. DEVILLERS: May I approach the witness, Your
21 Honor?

22 THE COURT: Yes, you may.

23 BY MR. DEVILLERS:

24 Q -- Government's Exhibit 31-26. And if you could take a
25 look at that for me.

1 A (Witness complies.)

2 Q What is that, sir?

3 A This was the white box I received. This has our
4 laboratory bar code that identifies this particular piece of
5 evidence for the chain of custody. I can identify it by the
6 case number. That's our property clerk's initials and date it
7 was received. And my initials appear here on the box.

8 Q What were you asked to do with that firearm?

9 A One particular thing is to see if it was an operable
10 firearm and then compare it to .40-caliber cartridge casings
11 within this case.

12 Q Did you do that?

13 A Yes, I did.

14 Q Was it an operable firearm?

15 A Yes. It fired projectiles under the force of an
16 explosion.

17 Q All right. I now want to direct your attention to page
18 5 of that document. What are we looking at here, sir?

19 A Another page of the report.

20 Q Are these your opinions and conclusions?

21 A Yes.

22 Q All right.

23 MR. DEVILLERS: Could you please highlight the
24 paragraph --

25 BY MR. DEVILLERS:

1 Q And I'm highlighting one of the paragraphs. Let me ask
2 you this: The exhibit, the entire exhibit I showed you,
3 Government Exhibit 31-5, is that a true and accurate depiction
4 of the crime lab -- the lab that you came up with?

5 A I'm not sure of the question.

6 Q Let me rephrase it.

7 Is this your lab report, Government's Exhibit 31-5?

8 A Yes.

9 MR. DEVILLERS: May I publish this to the jury, Your
10 Honor?

11 THE COURT: Are there any objections?
12 Mr. Durden?

13 MR. DURDEN: No objection.

14 THE COURT: Mr. Durkin?

15 MR. DURKIN: No, Your Honor.

16 THE COURT: Ms. Dixon?

17 MS. DIXON: No, Your Honor.

18 THE COURT: Mr. McVay?

19 MR. McVAY: No, Your Honor.

20 THE COURT: Mr. Nolder?

21 MR. NOLDER: No, Your Honor.

22 THE COURT: Yes, you may. It will be received, and
23 you may publish it.

24 BY MR. DEVILLERS:

25 Q And, sir, looking at page 5 of that document, in

1 particular, a paragraph which is the eighth paragraph down in
2 that document, could you -- It talks about Submission 11. Is
3 that the firearm you have in front of you right now?

4 A Yes. It's this firearm.

5 Q And, again, what were you asked to do?

6 A Again, to test fire this weapon to see if it was
7 operable and to compare it against cartridge casings within
8 this case.

9 Q And, once you did that, could you testify within -- in
10 your opinion, within a reasonable degree of ballistics
11 certainty, whether that firearm fired particular shell casings?

12 A Yes. It matched four of the cartridge cases submitted
13 to me.

14 Q All right. I'm going to hand you what's been marked as
15 Government's Exhibit 31-22 and 31-19. Take a look at those for
16 me.

17 A (Witness complies.)

18 Q What did I hand you?

19 A Two plastic bags. They have my item numbers and my
20 initials here and my initials where I sealed it up with our
21 evidence tape. This one contains three cartridge cases. This
22 contains four cartridge cases and one unfired cartridge.

23 Q The exhibit with the four cartridge cases, what exhibit
24 number do you have on that one?

25 A The four cartridge cases, the government's exhibit

1 number is 31-22.

2 Q Okay. And you indicated that -- Let's talk about that
3 31-22 for now. You indicated that there is some shell casings
4 in there?

5 A Yes.

6 Q And you also talked about your, I think, your item
7 numbers. Is that how you referred to that?

8 A Yes. It's my item number. It's sub-items 13 D. These
9 were both contained within a larger plastic bag.

10 Q Okay. The shell casings, is anything written on those
11 shell casings?

12 A Yes. This larger one, for instance, has "13 D5" and my
13 initials.

14 Q Okay. And you tested those shell casings with that
15 firearm?

16 A This one shell cartridge case within here was compared
17 to the test-fired cartridge casings from State's Exhibit, or --
18 excuse me -- Government's Exhibit 31-26.

19 Q Okay. Your Item #13 D5, in your opinion, within a
20 reasonable degree of ballistic certainty, was that shell casing
21 fired by that firearm?

22 A Yes, it was.

23 Q All right. Let's go to the next bag, please. And
24 what's that exhibit number, sir?

25 A Government's Exhibit #31-19.

1 Q And how many shell casings are in there?

2 A There's three fired cartridge cases.

3 Q And what are those item numbers to those shell casings?

4 A C1, C2 and C3.

5 Q And that's Item #13 C1, C2, and C3?

6 A That's correct. I'm sorry.

7 Q That's all right.

8 Did you test those shell casings against that firearm?

9 A Yes.

10 Q And within a reasonable degree of ballistic certainty,
11 do you have an opinion as to whether that firearm fired those
12 shell casings?

13 A Yes, I do.

14 Q And your opinion is?

15 A These three cartridge cases were fired in this firearm.

16 MR. DEVILLERS: May I have a moment, Your Honor?

17 THE COURT: Yes, you may.

18 (Whereupon, there was a brief interruption.)

19 MR. DEVILLERS: No further questions, Your Honor.

20 THE COURT: Mr. Durden, any cross?

21 MR. DURDEN: No, Your Honor.

22 THE COURT: Mr. Durkin, any cross?

23 MR. DURKIN: No, Your Honor.

24 THE COURT: Ms. Dixon, any cross?

25 MS. DIXON: No, sir.

1 THE COURT: Mr. McVay?

2 MR. McVAY: Yes, Your Honor.

3 - - -

4 CROSS-EXAMINATION

5 BY MR. McVAY:

6 Q Good afternoon, Mr. Duerr.

7 A Good afternoon.

8 Q Couldn't let you get away without -- couldn't let you
9 get away with thinking that maybe nobody cared.

10 I'm guessing I could probably stand up here and ask you
11 questions until 5:00 p.m. and we would recess and never
12 convince you to change your opinion with regard to those shell
13 casings, would I?

14 A That's correct.

15 Q I'm not even going to try, but I do have some questions.
16 I want to make sure that we're all on the same page, at least
17 from what it is we learned yesterday from Mr. Hardy. And that
18 is, Mr. Hardy did educate us and this jury about the process
19 that you go through in making comparisons for purposes of
20 firearms examination and comparisons of shell casings and
21 projectiles and other things. And he talked in terms of the
22 fact that this is a profession that requires something to help,
23 or assist, the naked eye. Is that fair to say?

24 A Yes. A microscope is utilized.

25 Q Okay. It's not something that you can't pick up a shell

1 casing or a couple of shell casings, hold them side by side,
2 and say these were fired from the same gun; is that fair to
3 say?

4 A That's fair.

5 Q So, you say you use a -- Is it a forensic comparison
6 microscope? I believe that's what Mr. Hardy called it.

7 A We call it a comparison -- firearms comparison
8 microscope.

9 Q Okay. And he described one that would, essentially,
10 give you the capability to look in through the microscope, as
11 we all did in junior high school, probably, although not as
12 powerful, or as, at least in my case, as old as I am, as what
13 you have today, but the capability to set two shell casings,
14 for example, or two bullet fragments, projectiles, underneath
15 that microscope and examine them at the same time. Is that the
16 same process you use?

17 A Yes. There's two stages. One is mounted on each stage,
18 and it brings it into view, into one sight. And we're able to
19 use a hairline and move it and look at the cartridge casings
20 together.

21 Q Okay. You used a term that I'm not familiar with, a
22 hairline.

23 A Hairline is what we call it that separates the two
24 images that we're looking at.

25 Q Okay. So, when you talk about hairline, essentially,

1 there is a hairline between the images so that you know where
2 the end of one is and where the start of the one next to it is?

3 A Yes.

4 Q Is that fair to say?

5 A Yes.

6 Q Okay. And Mr. Hardy discussed matters of class and
7 subclass and individual characteristics that can be noted on
8 projectiles or shell casings as placed upon them by the
9 instrument that's used, the firearm that's used. And that's
10 things that you're well familiar with, I'm sure.

11 A Yes.

12 Q Okay. He further discussed that the science, or the
13 scientific approach you use -- I believe he used the term that
14 it's a subjective scientific comparison that is made.

15 A Yes. It's viewed by ourselves. It's based on my
16 training, expertise, and through our accreditation for
17 proficiency testing.

18 Q Okay. But, ultimately, it comes down to a subjective
19 opinion in your mind as to whether there's a sufficient
20 comparison between the two items being compared; is that fair?

21 A Yes, if there's sufficient individual characteristics to
22 conclude an identification.

23 Q Okay. So it wouldn't be -- Again, as I believe we heard
24 yesterday, just the class characteristics or subclass
25 characteristics, you wouldn't make an identification based upon

1 those alone, would you?

2 A No. That would just separate it into a particular
3 group.

4 Q Okay. And if you're looking at, say, as opposed to a
5 shell casing, which as a general rule comes to you whole,
6 correct, an entire shell casing most of the time, if not all of
7 the time?

8 A Yes.

9 Q And, in comparison, a projectile frequently will come to
10 you as a partial projectile; is that correct?

11 A Yes. It could come as fragments, yes.

12 Q Okay. Because as a bullet, projectile, as it has been
13 defined for us, passes through different substances, if it were
14 to pass through a body, strike a bone, or if it somehow were to
15 hit a piece of metal or something like that, it might fragment
16 that projectile into separate parts. Fair to say?

17 A Correct.

18 Q So, when you're making a comparison, say, from those
19 that you've test fired -- and I'm talking about projectiles --
20 you testified it goes into a -- what's your collection system?
21 Is it a water-based collection system?

22 A We have a water tank, yes.

23 Q If you'll describe for the jury how that works.

24 A It's a large steel tank that contains, I would say,
25 approximately 400 gallons of water, with a tube in the end that

1 we shoot into. And due to the density between air and water,
2 it will stop the projectile, and it enables us to collect a
3 bullet without damaging it.

4 Q Okay. And anyone who has taken a cannon ball off the
5 high dive understands that concept, I'm sure.

6 A Yes. It stops it.

7 Q Okay. So, but when you receive that projectile and
8 you're comparing that against one that's maybe recovered from a
9 crime scene or from the body of a victim from the performance
10 of an autopsy that maybe is a partial fragment or a partial
11 projectile, you'd be comparing a whole test case, test firing,
12 against a partial, correct?

13 A Yes.

14 Q And that complicates the issue in terms of making an
15 identification, in terms of finding a sufficient comparison; is
16 that fair to say?

17 A Not necessarily, no.

18 Q It wouldn't -- Is it fair to say that it would have a
19 tendency to reduce the number of points of comparison that you
20 could make?

21 A It would have possibly less grooves to compare, but
22 there could -- it may only be one partial groove that has
23 sufficient individual characteristics to conclude that
24 identification.

25 Q Okay. And there are instances, it's fair to say, where

1 you have a partial fragment which is just too much of
2 a -- well, maybe I should say too little of a partial fragment
3 in to order to make an identification?

4 A Yes. Many times there is insufficient characteristics
5 to even get a class characteristic -- a class to a
6 particular -- classify arms, let alone individual
7 characteristics to identify it to a particular firearm.

8 Q Okay. So, again, we're talking here about a subjective
9 scientific comparison, meaning you examine this based upon your
10 knowledge, training, and experience and form an opinion as to
11 whether you think there is a sufficient comparison to call it
12 whatever you call it to say that you think this was fired from
13 a particular gun?

14 A Yes.

15 Q Correct? Okay.

16 Now, let me play skeptic, or devil's advocate, for a
17 minute.

18 I have good eyes. I do wear contact lenses, but,
19 corrected, I have pretty good vision. And I have the ability
20 to peer into a microscope just as you do or any of your
21 colleagues would have. I have the ability to observe two
22 images and discern differences between those two images or
23 similarities between those two images.

24 And tell me what it is that you can see, or explain to
25 this jury what it is that you can see that I would not be able

1 to, not having been trained and having knowledge and experience
2 in your field.

3 A Your Honor, I do have a demonstration. I could provide
4 the photographs I took between the comparison of these two
5 samples.

6 Q That's fine. Do you know what -- I don't know what the
7 exhibit numbers are.

8 MR. DEVILLERS: I don't have them on me.

9 Do you have them?

10 THE COURT: You brought some?

11 COURTROOM DEPUTY CLERK: Yes. They're a part of my
12 case notes, actually, sir.

13 THE COURT: All right.

14 Would you care to see the case notes, Mr. McVay?

15 MR. McVAY: Yes. We can work from that, using the
16 Elmo. If you can --

17 May I approach the witness?

18 THE COURT: Yes, you may.

19 BY MR. McVAY:

20 Q If you could maybe --

21 A Can I assist him?

22 THE COURT: Yes.

23 BY MR. McVAY:

24 Q -- show me what it is that you want to display.

25 A (Witness showing Mr. McVay a document.)

1 Q Oh, these are --

2 A I'm sorry. I'm waiting.

3 Q What I wanted you to do is take these pages and put them
4 on the Elmo so we can display those --

5 A Okay.

6 Q -- so that you and I could be looking at it at the same
7 time. Sorry.

8 Okay. Is that adequate for you to look at, sir?

9 A Yes, sir.

10 Q And describe what it is that you want to show this jury,
11 or tell this jury.

12 A Yes.

13 Q And what is it that we are looking at there?

14 A This is marked -- Okay. This one (indicating), this one
15 (indicating). Whoops! I'm trying to --

16 Q Okay.

17 A It won't let me mark the other two.

18 Q The top left, where I marked, the top right to that, and
19 the bottom left are C1 through C3 of my exhibit numbers. That
20 is showing the comparison, one indication, where I would -- a
21 reference point. This is from my notes.

22 As you can see, the line going down in the middle
23 between the two --

24 MR. DEVILLERS: Your Honor, I believe -- Is it
25 published?

1 THE COURT: No, it's not published.

2 Side-bar for a moment.

3 THE WITNESS: Oh, I'm sorry.

4 THE COURT: No. No. No. You did nothing wrong.

5 THE WITNESS: Okay.

6 - - -

7 (Thereupon, the following proceeding was held at side-bar.)

8 THE COURT: You can do whatever you like with these
9 exhibits, Mr. McVay; but, since you have chosen to put yourself
10 in the position as a direct examiner, you have to establish a
11 foundation for the admission of these, as Mr. Devillers would
12 have had to if he chose to do that in his direct examination.

13 MR. McVAY: Okay.

14 THE COURT: If you choose to go down this road, you're
15 going to have to go down this road replete with all of the
16 baggage of cross-examining another party's expert in a manner
17 that's akin to a discovery deposition. So you are going to
18 have to set the foundation for the admission of these exhibits.
19 But you have the advantage of at least having him on cross. So
20 you can, you know, lead him as you go through the establishment
21 of the foundation. But we can't skip that part.

22 MR. McVAY: Yes, Your Honor. Actually, I thought he
23 had indicated at some point these are pictures that he had.
24 But I will reaffirm that.

25 MR. DURKIN: Your Honor, just on behalf of Mr. Harris,

1 we're now seeing things we have never seen before. And, so, on
2 behalf of Defendant Harris, we would object. We're going to
3 object to moving these and -- publishing them and moving them
4 into evidence, if that happens.

5 MR. DEVILLERS: Your Honor, may I?

6 THE COURT: You may, Mr. Devillers.

7 MR. DEVILLERS: We provided this witness. We also
8 told all of the attorneys that I'm more than willing -- that
9 everything is for them to see from the bench notes,
10 photographs. Anything they want to look at, they can do it.
11 And some people -- Mr. Durkin took advantage of that with
12 Mr. Hardy. But we've made this available to them. So this was
13 available to them to look at.

14 MR. DURKIN: And I'm not complaining, at all, That I
15 was ambushed.

16 THE COURT: I'm not going to rush the government. You
17 decided to take the government's expert and then go through,
18 you know, his files and let him explain whatever.

19 That's Mr. McVay's choice. It's a strategic decision
20 he's made. And if you want to interpose your objection, you
21 may. But it's not the government's fault.

22 MR. DURKIN: And I'm not suggesting it is.

23 MS. DIXON: I would simply object and ask Your Honor
24 to sever, just for the record. It's --

25 THE COURT: No. No. There is no substantive basis to

1 sever this.

2 MS. DIXON: It's just --

3 THE COURT: I don't know that any of us, save perhaps
4 Mr. Devillers, knows what may lurk in his files. But seeing
5 that Mr. McVay is soon to find out, do you have anything that
6 you wish to add to any of these objections?

7 MR. NOLDER: No. I'll stay out of it.

8 MR. DURDEN: I'll object for the record, Your Honor.

9 THE COURT: What are you objecting -- I mean, there is
10 nothing to object to. My point is, unless you are objecting to
11 him laying the foundation for these exhibits -- Is that what
12 you all are objecting to?

13 MR. DURKIN: We are.

14 MS. DIXON: We are.

15 THE COURT: Your objection is noted, but there is no
16 substantive or evidentiary basis for your objection. The
17 objections are overruled.

18 MR. McVAY: I'm going to ease everyone's concerns
19 here. In light of the conversation we had here, I'm going to
20 move on to another area.

21 THE COURT: That's totally up to you.

22 (The following proceedings were had in open court.)

23 THE COURT: Please continue, Mr. McVay.

24 MR. McVAY: Thank you, Your Honor.

25 BY MR. McVAY:

1 Q Mr. Duerr, in light of our conversations, I'm going to
2 move on to another area of my inquiry. Thank you.

3 Again, just to kind of be a level-setter again, what
4 we're talking about here is, in your field, it's a subjective
5 scientific comparison that is made in which you draw a personal
6 opinion about whether there's a comparison sufficient to
7 satisfy you as to whether or not a firearm fired a
8 sufficient -- fired a particular shell casing or -- I'm
9 sorry -- projectile and ejected a particular shell casing,
10 correct?

11 A Yes. It's my expert opinion, yes.

12 Q Okay. And, in your work, this is not a matter of, when
13 you make your comparisons, you don't have any type of
14 machinery, because we are talking about microscopic things
15 here, to do any form of measurement, correct?

16 A That's correct. I did not do any measurements.

17 Q And the reason you don't do measurements is because it
18 would be somewhat unreliable in the sense that we're talking
19 about a two-dimensional measurement of a three-dimensional
20 object? Is that fair to say?

21 A And it would still be me taking those measurements.

22 Q Okay. And, again, they're a two-dimensional view of a
23 three-dimensional object, looking through the microscope and
24 trying to measure something that is -- is appearing to you as a
25 two-dimensional object, correct?

1 A Yes. However, by using the shading of the lights and
2 everything, it appears to be three-dimensional under a scope.
3 This is a two-dimensional picture, yes.

4 Q Okay. So, having said that, basically, I have two
5 questions for you.

6 When you do your comparison, is it fair to say that
7 there is nothing in the work that you do that tells you when a
8 projectile was fired or when a shell casing was ejected,
9 correct?

10 A Oh, that's correct. You mean "time" as in when it was
11 actually done at the crime scene, or whenever?

12 Q You can't form or express an opinion as to on what date,
13 what time, a projectile was fired or a shell casing ejected?

14 A That's correct.

15 Q Okay. And, again, similarly, you can't tell who fired
16 that firearm? Even assuming that you're correct as to your
17 comparison and the opinions that you formed, that opinion does
18 not inform you as to who fired a firearm. Fair to say?

19 A That's correct. I have personal knowledge -- I have no
20 personal knowledge of either.

21 MR. McVAY: Okay.

22 May I have a moment, Your Honor?

23 THE COURT: Yes, you may, Mr. McVay.

24 (Whereupon, there was a brief interruption.)

25 MR. McVAY: No further questions. Thank you,

1 Mr. Duerr.

2 THE WITNESS: Yes.

3 THE COURT: Mr. Nolder, do you have anything?

4 MR. NOLDER: No questions.

5 THE COURT: Mr. Devillers, I am assuming that you have
6 nothing further, or do you?

7 MR. DEVILLERS: I do, Your Honor.

8 THE COURT: Oh.

9 - - -

10 REDIRECT EXAMINATION

11 BY MR. DEVILLERS:

12 Q I would like to see what you showed Mr. --

13 THE COURT: McVay.

14 BY MR. DEVILLERS:

15 Q -- McVay.

16 MR. DEVILLERS: Sorry, Kirk.

17 BY MR. DEVILLERS:

18 Q Could I see that, briefly?

19 A My notes?

20 Q Your notes. Your photographs.

21 MR. DEVILLERS: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes, you may.

24 THE WITNESS: May I separate these out? These are my
25 only case notes.

1 MR. DEVILLERS: You may. I'm going to put a sticker
2 on it, but I'll give it back to you.

3 THE WITNESS: If you're going to give it back to me,
4 okay.

5 MR. DEVILLERS: I promise.

6 THE WITNESS: This is prior to electronic. It's
7 paper.

8 BY MR. DEVILLERS:

9 Q What was it that you wanted to show? Is it this?

10 A The two with the -- The two pages with the orange tabs.

11 Q I'm going to put a sticker on it, and I'm going to mark
12 this as Government's Exhibit 31-31. Is that okay?

13 A Yes.

14 Q All right. And, for the record, what is it we're about
15 to look at?

16 A These are the photographs showing the location and index
17 point where I made my identification for each of the cartridge
18 cases that I identified in this case.

19 Q So, you've identified four cartridge cases thus far?

20 A The ones that I've testified about, yes.

21 Q And were all of those cartridge cases fired by the same
22 firearm, within a reasonable degree of ballistic certainty?

23 A Yes. Three on one page and one on the other page.

24 Q I'm going to show you what's been marked as Government's
25 Exhibit 31-31. All right. And are these photographs of those

1 four shell casings?

2 A Only three -- Three of those four are the ones I've
3 testified about.

4 Q Okay. And what's the fourth one?

5 A That is another cartridge case that I examined in this
6 particular case.

7 Q Nothing to do with that particular firearm?

8 A Correct. It did not match that firearm. In fact, it is
9 of a different caliber.

10 Q Okay. But these are pictures that you took?

11 A Yes.

12 Q Are they true and accurate depictions of what you saw
13 through the microscope?

14 A Yes, they are.

15 MR. DEVILLERS: May I publish this to the jury, Your
16 Honor?

17 THE COURT: Any objection, Mr. Durden?

18 MR. DURDEN: No, Your Honor.

19 THE COURT: Mr. Durkin?

20 MR. DURKIN: Yes, for the previously stated reasons,
21 Your Honor.

22 THE COURT: Ms. Dixon?

23 MS. DIXON: No, Your Honor.

24 THE COURT: Mr. McVay?

25 MR. McVAY: No, Your Honor.

1 THE COURT: Mr. Nolder?

2 MR. NOLDER: No, sir.

3 THE COURT: Your objection is noted, Mr. Durkin, but
4 overruled. The door has been opened.

5 Please proceed.

6 MR. DEVILLERS: Thank you, Your Honor.

7 BY MR. DEVILLERS:

8 Q Okay, sir. Can you tell us, just the shell casings,
9 where the shell casings subject to your testimony today are
10 located in this exhibit?

11 A I'll explain, the top left photograph, that's
12 actually -- on the left is a test fire. On the right is the
13 evidence.

14 Q Okay.

15 A The hairline going down the middle separates the two.
16 So the cartridge case -- The comparison on the top left, top
17 right, and bottom left are three of the four cartridge cases.

18 Q Okay.

19 A That would be C1, C2 and C3.

20 Q Exactly. Okay. So, the image we see in the top left,
21 that is one of the casings; is that right?

22 A It's actually two cartridge casings. It's a test-fired
23 cartridge case and an evidence cartridge case.

24 Q And which one is the test -- Which side is the test-fire
25 on?

1 A Left.

2 Q Left. And does that test fire come from the firearm you
3 have in front of you?

4 A Yes.

5 Q All right. Explain to us -- I believe the question on
6 cross-examination was how you, as a examiner, can say that that
7 was fired, within a reasonable degree of ballistic certainty,
8 from the same firearm, the things you look at. What are you
9 looking at here in this image?

10 A First I'll explain, the test fire -- a cartridge case is
11 smooth, the primer, the silver part. The first thing I would
12 do is, in the comparison of the two, examine if the class
13 characteristics are alike. This one, for instance, has the
14 elliptical firing pin, egg-shaped, oval-type firing pin.

15 On this one, this is -- Like I said, this is just a
16 point of reference for me in my notes.

17 What I'm looking at there, along the hairline is the two
18 samples brought together. The individual characteristics are
19 the deep -- You can see the valleys listed there and things
20 like that. There was other areas on this primer that I
21 examined by moving the cartridge cases on that hairline.

22 And you can see differences, individual characteristics,
23 if you look at where I have the hairline on that. For example,
24 on the bottom left, that's a different cartridge casing showing
25 a different -- same class characteristic, being elliptical, but

1 the individual characteristics are different on that aperture
2 mark where that hairline is.

3 And as you can see in the other three, just with the
4 pictures along my reference items, you can see the similarity,
5 or the matching, between those three samples.

6 MR. DEVILLERS: Okay.

7 I have no further questions, Your Honor.

8 THE COURT: Mr. Durden?

9 MR. DURDEN: No, Your Honor.

10 THE COURT: Mr. Durkin?

11 MR. DURKIN: No, Your Honor.

12 THE COURT: Ms. Dixon?

13 MS. DIXON: No, sir.

14 THE COURT: Mr. McVay?

15 MR. McVAY: No, Your Honor. Thank you.

16 THE COURT: Mr. Nolder?

17 MR. NOLDER: No.

18 MR. DEVILLERS: May I return the --

19 THE COURT: Mr. Duerr, thank you very much, sir. You
20 may be excused, and you may return those items to him.

21 THE WITNESS: Thank you, Your Honor.

22 MR. DURKIN: Your Honor, would we be able to get a
23 color copy of that exhibit?

24 THE COURT: I was just getting ready to say that,
25 since it was admitted into evidence, we do need a copy of that

1 exhibit. We'll get that for you.

2 MR. DEVILLERS: Thank you, Your Honor.

3 THE COURT: Mr. Duerr, you may be excused.

4 Your answer is "yes."

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Kelley, your next witness?

7 MR. KELLEY: Thank you, Your Honor. We call Eileen
8 Fyffe.

9 (Witness sworn.)

10 THE COURT: Ms. Fyffe, please come forward and be
11 sworn, ma'am.

12 COURTROOM DEPUTY CLERK: Please raise your right hand.
13 (Witness sworn.)

14 COURTROOM DEPUTY CLERK: Please be seated.

15 THE COURT: Ms. Fyffe, please bend the microphone
16 toward you and speak clearly into it. All right?

17 THE WITNESS: Okay.

18 THE COURT: Thank you very much, ma'am.
19 Please proceed, Mr. Kelley.

20 MR. KELLEY: Thank you, Your Honor.
21
22
23
24
25

- - -

EILEEN FYFFE

Called as a witness on behalf of the Plaintiff,
being first duly sworn, testified as follows:

- - -

DIRECT EXAMINATION

BY MR. KELLEY:

Q Would you please state your name and spell you first and
last name for our jury?

A Eileen Fyffe, F-Y-F-F-E.

Q Ms. Fyffe, where do you currently live, what area of
town?

A West side.

Q How long have you lived on the west side?

A All my life.

Q And do you have children?

A Yes.

Q How many children have you had?

A Two.

Q What are their names?

A Anthony Wright and Crystal Fyffe.

Q When was Crystal born, ma'am?

A August --

THE COURT: Take your time, ma'am. Take your time.

Betty, would you give Ms. Fyffe some water?

1 THE WITNESS: Just a second.

2 THE COURT: Ms. Fyffe, take your time.

3 THE WITNESS: August 3rd, 1981.

4 BY MR. KELLEY:

5 Q And, Ms. Fyffe, I know it's difficult, but I'm going to
6 ask you to kind of bear with me, and we're going to talk a
7 little bit about Crystal. Okay?

8 A Uh-huh.

9 Q Where did Crystal go to school initially?

10 A Elementary, Avondale. High school, West, for a little
11 bit. And she dropped out.

12 Q Do you know what grade she dropped out in?

13 A About tenth.

14 THE COURT: What high school did you say she went to?

15 THE WITNESS: West High.

16 THE COURT: West. Okay.

17 BY MR. KELLEY:

18 Q Did she work at all during this time?

19 A She was working some part-time jobs.

20 Q What kind of work did she do part-time?

21 A She worked at -- She was going to printing -- working at
22 a printing place downtown somewhere here.

23 Q And can you estimate for us, roughly, the years that
24 that would have been going on?

25 A Probably about 2006, 2007, maybe.

1 Q At some point did she have a child?

2 A Yes.

3 Q When was the child born?

4 A March 21, 2000.

5 Q And what's the child's name?

6 A Marcysia Daniels.

7 Q And if you'll help our court reporter out, can you spell
8 Marcysia's name for us?

9 A M-A-R-C-Y-S-I-A.

10 Q Do you all have a nickname for her?

11 A Cysia.

12 Q In the years after she had Cysia, were you involved in
13 helping raise Cysia?

14 A Yes, From the beginning.

15 Q And not that the jury needs an explanation, but just
16 explain to the jury how was the relationship between you,
17 Crystal, and Cysia.

18 A Crystal lived with me, and we -- we -- mother daughter.
19 We would have our fun times. We'd argue some because she was a
20 grown woman. So, you know, I thought you have to have a
21 part-time job and help pay the bills and take responsibility
22 and was -- you know, she was a mother, but she was a good
23 person.

24 Q How old was she when she had Cysia?

25 A How old was she? Cysia was born -- nineteen, nineteen,

1 twenty.

2 Q Was she in a relationship during the time she had Cysia
3 or shortly thereafter?

4 A She was with Marcysia's dad.

5 Q Okay. And, over time, did that change?

6 A Yes.

7 Q Did she get into another relationship?

8 A Yes.

9 Q Who was that relationship with?

10 A She was -- Robert Ledbetter.

11 Q Do you remember when that relationship started?

12 A It was while she was working at the printing shop.

13 Q Okay. Did you meet Robert Ledbetter when she first
14 started in that relationship?

15 A No.

16 Q How did you hear about him?

17 A Really, just kind of, like, when she started having
18 Marcysia's birthday party, I met him.

19 Q Do you remember which birthday that was?

20 A It would have been -- I don't know -- maybe her sixth
21 birthday or something. I'm not really sure.

22 Q Would that put us about 2006?

23 A Yeah.

24 Q Does that sound about right to you? If you're not sure,
25 that's okay.

1 A Yeah. I'm just trying -- yeah, because it was just all,
2 you know, birthday parties through the years.

3 Q That was the first time, though, you met Mr. Ledbetter?

4 A Yeah, but we never really -- we never talked.

5 Q At that party?

6 A No. Probably, if anything, maybe "hi," but no talking.

7 Q Okay. Was this relationship going on for awhile as far
8 as you knew?

9 A Clear up until, you know, he got arrested. They did
10 split up a few times where she -- you know, split up a few
11 times. She tried to leave.

12 Q Let's start with, where was she living when she first
13 started dating him?

14 A With me.

15 Q In the same house you live in today?

16 A No.

17 Q When did you move into the house that you live in today?

18 A I think 2007.

19 Q Okay. But she lived with you before that?

20 A Yes.

21 Q And during times if the relationship was rocky, would
22 she share that with you?

23 A No.

24 Q Explain that so our jury understands.

25 A Crystal didn't tell me about anything that was going on

1 like that. I was working, and she was home with Marcysia. And
2 then when I would come home, she would leave. And I would -- I
3 have to be at work at like -- I get up at 4:00, or whatever, in
4 the morning. And I'd be calling and calling her phone, and she
5 wouldn't answer. And I'd get agitated and mad because she
6 wouldn't call. But then it would just be late, you know, late,
7 late at night, she would come in. But then she would go in her
8 room with Marcysia. And then I'd get up and go to work and
9 come back home. And it was sort of like, sometimes, an ongoing
10 process.

11 Q Was that a source of some problems between you and
12 Crystal at times?

13 A Yeah.

14 Q Were you caring for Cysia when she would be gone?

15 A Yes.

16 Q And those are times you said she -- In regards to the
17 phone, could you reach her on the phone regularly?

18 A No. Most of the time, no. And I'd always ask her why,
19 why -- why ain't you answering your phone?

20 She'd say, Oh, my phone is dead.

21 She would always have some kind of excuse.

22 I said, What if something was to happen to Marcysia?
23 How am I going to get ahold of you, you know, if she was to be
24 in the hospital or something?

25 But then, you know, that was the end of that.

1 Q Did there come a time, in fact, that Crystal did go to
2 the hospital?

3 A Yes.

4 Q Tell our jury about that. How did you first hear about
5 it?

6 A I kept calling and calling and calling her phone
7 because, my mom, was -- my mom was dying. This was in 2009.
8 My mom was on her death bed. And my sister called me, and she
9 told me that I needed to get over there, you know, to spend a
10 few moments with her.

11 So I called because I had Marcysia. So, I kept calling,
12 and I kept calling. And she wasn't answering. And so,
13 finally, her friend answered the phone. And I said, Leah, I
14 said, where's Crystal?

15 And she said, I think she is in the hospital.

16 I said, What do you mean she's in the hospital?

17 She said, Well, she's been shot.

18 And I said, Do what?

19 And she said -- she said, She didn't want me to call
20 you. She said, She is in surgery.

21 And I said, Where are you at?

22 And she said, I'm at OSU.

23 And I said, Okay. I said, I'm coming. I'm on my way.

24 So I called my sister, and her and my brother-in-law
25 took me up to the hospital at OSU.

1 Q Did you get to see Crystal when you got there?

2 A When I first got there, I had to sit down and when they
3 was bringing her out of surgery. And the doctor came out and
4 explained to us what they did to her hand. And then we got to
5 go up there. They was bringing her out of recovery. So we
6 went upstairs to her room.

7 Q Can you explain for the jury what was the injury that
8 she suffered?

9 A She got shot in her right hand, in her -- by her finger,
10 pinky.

11 Q And what kind of damage did it cause?

12 A They wanted to remove her finger. But she told them,
13 when she went in, she didn't want her finger cut off. She
14 didn't want -- she wanted to keep her finger. So they put some
15 metal rods, whatever, in her hand to keep her finger together.
16 But he said it would never be right. And he also even told
17 her, eventually, she may have to have it cut off because of the
18 damage that it did.

19 Q Was there a time at the hospital that you were then able
20 to talk to Crystal about what had happened?

21 A When I got -- When we got to go upstairs, they brought
22 her in the room. And she was still coming out of the, you
23 know, the drugs. And her friend, Leah, was there. And her
24 phone rung, and I picked it up. And she still wasn't talking.
25 She was still coming out of it. And her phone rung. And I

1 picked it up. And she heard me say -- because I said -- it
2 was -- I think -- I don't know -- Don somebody asked where is
3 Crystal. I said, She's in the hospital.

4 And all of a sudden she kind of like opened her eyes.
5 And she's like -- She got real angry. She's like, Oh, my gosh!
6 She said, Hang up! Hang up! She said -- She said, You just
7 don't know what you just did.

8 And I'm like, What are you talking about, Crys?

9 So, I hung up the phone. And she's like, Just leave.
10 Just leave.

11 And I'm like, What -- what -- what did I do?

12 She said, Just leave. Just leave. You don't
13 understand.

14 I'm like, Crys, I said, I come all the way up here to
15 the hospital. My mom is dying. And, you know, and I come up
16 here, and you're telling me to leave. I don't understand.
17 What did I do?

18 And I could see I was making her upset. So, I looked at
19 my sister, Nancy. And then I said, Okay. I said, I'll leave.

20 Q You mentioned a Leah was there. Do you know this Leah?

21 A Yes.

22 Q Who is she?

23 A She was Crystal's friend.

24 Q Okay. And before you left, or before this incident with
25 the phone call, did Crystal explain to you how she had gotten

1 shot?

2 A All I heard was that they were -- I don't -- It didn't
3 come from Crystal. I don't -- that they -- it was supposed to
4 --

5 MR. GATTERDAM: Objection.

6 THE COURT: Sustained.

7 Rephrase your question, Mr. Kelley.

8 BY MR. KELLEY:

9 Q Let's focus, first, on the time in the hospital.

10 Did you talk to Crystal about what had happened while
11 you were in the hospital with her?

12 A No.

13 Q Okay. Did there come a time where you talked to Crystal
14 about what had happened?

15 A Yes.

16 Q And did she explain to you, then, what had happened?

17 A I -- I had two different stories, the first story and
18 the last story. So --

19 Q Tell us the first story. What was the first story?

20 A The first story -- the first thing that she told me,
21 this is what she said: That she and Brandon had stopped at a
22 place up on -- oh, I don't know -- I'm going to say Weber Road,
23 whatever -- at a restaurant. Brandon got out to go get some
24 food, wings, chick- -- I don't know -- went out to get
25 something. And she said that she was in the car, and two

1 people were arguing. And she said she got scared and got out,
2 and she heard shots, and she put her hands up like this
3 (indicating) for the cross-fire, and she got shot in the
4 finger.

5 And I said, Crys, did any -- I didn't hear anything on
6 the news. I didn't hear her talk to any kind of -- no cops.
7 So I just couldn't understand, you know. If you got shot in
8 the hand through a cross-fire, why didn't I hear anything on
9 the news?

10 And that's -- she wouldn't change. That's what -- the
11 story she told me until --

12 Q Until it changed?

13 THE COURT: Ma'am, in relation to when she was shot,
14 do you remember approximately when she told you this first
15 story?

16 THE WITNESS: It was -- It was when she -- She told me
17 this, like, the day, maybe, after she had got shot --

18 THE COURT: Okay.

19 THE WITNESS: -- because, of course, I asked what
20 happened.

21 THE COURT: Yeah.

22 THE WITNESS: And it was just, that night, she didn't
23 tell me.

24 THE COURT: Okay. Thank you.

25 Please continue, Mr. Kelley.

1 MR. KELLEY: Thank you, Your Honor.

2 BY MR. KELLEY:

3 Q Did you talk to Brandon at all in that day that she was
4 shot or close in time to that?

5 A On the way to the hospital.

6 Q Tell us about that.

7 A He said that he was out looking for the person who shot
8 Crystal. And I told him -- I said, Don't do that. You need to
9 go back to the hospital and be with her.

10 Q Did you learn how Crystal got to the hospital?

11 A At that time, no. Later on, yes.

12 Q Did you ever see Brandon at the hospital?

13 A No.

14 Q In the weeks that followed, was Crystal still in a
15 relationship with Brandon?

16 A Yes.

17 Q Can you describe for the jury, in the weeks that
18 followed, how would you describe their relationship?

19 A I -- My mom had just passed. So, when Crystal got out
20 of the hospital, I had cleaned up a room for her so she could
21 be comfortable for her hand and everything. And I went to go
22 over, because my mom passed at my sister's house, and we were
23 all there before -- before they took my mom out. And I was
24 surprised to see Brandon in my house, because I've never seen
25 Brandon in my house. He's never been in my house, but he was

1 laying beside her in the bedroom, and Leah was on the other
2 side of her. And I guess they ended up getting a place
3 together. He took her to Hawaii.

4 Q Was that soon after that time when she'd been shot?

5 A She was shot in 2009, in January. I don't know the
6 exact time and date or anything like that. I had too much
7 other stuff, you know.

8 Q But you remember it was around the time your mom was
9 passing, right?

10 A Uh-huh.

11 Q And did she go to Hawaii shortly thereafter?

12 A If it was the same year, it would have been, like,
13 around her birthday, because me -- me and Marcysia, we painted
14 her one bedroom for her. We kind of set it up like a hotel
15 room. So it was around -- it would be probably at the end of
16 July, around.

17 Q But you indicated she wasn't living there?

18 A She was -- She was still living with me.

19 Q Was she also living somewhere else, or spending a lot of
20 time elsewhere?

21 A With Brandon.

22 Q Do you know where they were living when they were
23 together?

24 A I -- I never went to the first house that Crystal said
25 they had. I've never been to their house other than until

1 after Crystal got -- until after Brandon got arrested and
2 Crystal moved. And it was up in Reynoldsburg.

3 The other one, I think -- I can't even tell you.
4 Crystal didn't tell -- Crystal didn't tell me too much of that
5 stuff until after.

6 Q You mentioned a couple times that there was a second
7 story. We're talking about after. I want you to explain to
8 the jury when did things change and Crystal started explaining
9 more things to you?

10 A Not until after Brandon was in jail.

11 Q Do you remember when that was?

12 A She started telling me the first time they'd arrested
13 him when she called me, and she said, Mom, did you see the
14 news?

15 And I said, No. Why?

16 And she said, Because they're looking for Brandon.

17 I'm like, Well, what are they looking for him for?

18 She said, For murder.

19 And I'm like, Do what?

20 And it threw me back. And then, then after, she started
21 telling me stuff.

22 Q Let's take it small bits at a time. Do you remember
23 where that murder was? Does a town stand out for you?

24 A Pickerington.

25 Q Pickerington. Did Crystal say she knew anything about

1 this murder?

2 A She said the Pickerington detective wanted to question
3 her about somebody had said that she had had a bag of clothes
4 and got rid of the clothes of a murder that happened in
5 Pickerington.

6 Q And did she say if she had done something like that?

7 A I asked her. I said, Crystal, did you take something
8 like that and do -- .

9 She is like -- She said that she did take something and
10 she threw it away but she didn't look at it to see what was in
11 it.

12 Q Did she seem to know that's what they wanted to talk to
13 her about?

14 A She said that somebody had told her that that's what
15 they were --

16 MR. GATTERDAM: Objection.

17 THE COURT: Sustained.

18 Rephrase your question, Mr. Kelley.

19 MR. KELLEY: Sure.

20 BY MR. KELLEY:

21 Q This thing about the bag of clothes and whether she did
22 something with it or not, did you and Crystal talk about that
23 much?

24 A Not much.

25 Q Did it seem like that was something important to

1 Crystal?

2 A Yes. Yes, because she was afraid that they -- the
3 detective told her that she could be charged with getting rid
4 of evidence and --

5 Q Did she say if she did anything to help Brandon as it
6 related to this murder?

7 A She just said that she had threw a bag away, but she
8 didn't know what was in it. She -- That's all she told me
9 about that.

10 Q Did she ever say anything about helping Brandon find a
11 location or an address?

12 A She -- She was always looking up stuff. She didn't say
13 to -- not that I remember her saying anything.

14 Q Okay. Then, after she starts telling you things like
15 that, does she tell you what really happened the time she was
16 shot?

17 A Yes.

18 Q Can you tell our jury about that, please?

19 THE COURT: Mr. Kelley, would you also, in setting
20 your foundation, give me a time frame?

21 MR. KELLEY: I'm sorry.

22 BY MR. KELLEY:

23 Q You said Brandon was being looked for in relation to
24 this Pickerington murder. Do you have a time that you can
25 estimate for us that would have been?

1 A When he got picked up?

2 Q Yeah.

3 A It was in February. They pulled him over for a traffic
4 stop, or something, and found drugs on him. So, then he was
5 arrested and --

6 Q Do you know what year that was?

7 A 2011.

8 Q Okay. And is that around the time frame, then, that she
9 started telling you more and more of these things?

10 A As it got closer to -- about after she started going to
11 talk to her attorney and then she started to tell me a little
12 bit more and more of what was going on.

13 Q And did she tell you about that original shooting
14 incident and what happened?

15 A For the Pickerington, or her --

16 Q No, in regards to her being shot in the hand.

17 A Yes.

18 Q What did she tell you had happened?

19 A She said that Brandon had shot her in the hand because
20 she was trying to leave. And she said that he had her tied
21 like this (indicating), with her hands up like this, and held a
22 gun to her head and threatened her and threatened our life.
23 And the gun went off and shot her in the hand, and he dropped
24 her off at the hospital and told her the story to tell the
25 police and --

1 Q Did she say why this happened?

2 A Because she said that she wanted to leave.

3 Q Wanted to leave Brandon?

4 A (Nodding affirmatively.)

5 Q Did she say if Brandon made any threats to people other
6 than her?

7 A To myself, my sister, my son, that if she was to leave,
8 that he would do something to us.

9 Q After telling you that, do you know if Crystal still had
10 some contact with Brandon?

11 A I don't know.

12 Q Were there times?

13 A She -- I think she went down -- I think she talked to
14 him -- Yes, she talked to him a few times on the phone.

15 Q Did she explain why she didn't tell you the truth, the
16 first time, about what had happened?

17 A Because she was scared, she didn't -- and he told her
18 not to say nothin'.

19 Q Are you aware of Brandon spending money on Crystal?

20 A Yes.

21 Q Can you tell our jury about some of the things that you
22 know he bought?

23 A Cars and some jewelry from -- What is it? -- the Kay
24 Kay, whatever, Jewels? I don't know what that store is called
25 Kay Jewelry.

1 Q Okay. Can you tell us some of the cars? Do you know
2 about some of those cars, the specifics?

3 A She had -- She had a black car, one time, with tinted
4 windows. And she ended up getting rid of it. And she had a
5 Trailblazer that, supposedly, had got wrecked. And then she
6 had a Tahoe. And then there was the blue car that was in her
7 name.

8 Q Tell us about that blue car. Can you describe it for
9 us?

10 A It was an older car, real pretty. And it was a Chevy
11 Impala.

12 Q And whose car was it?

13 A She said it was in her name, but it wasn't hers. It was
14 Brandon's.

15 Q During this time, was Crystal, herself, working?

16 A No. There -- She didn't have a job, like that, where
17 she could afford all that stuff.

18 Q Where did you think her money was coming from?

19 A Just -- I knew she was getting her money from Brandon.

20 Q And during this time frame -- Strike that, Your Honor.

21 You mentioned Brandon getting arrested. Before he was
22 arrested, though, did anything ever happen with that blue car?

23 A She said that -- I don't even know how it came up, but
24 she said that somebody had stolen the car from Melissa's house
25 and she had to call insurance on it.

1 And I said, What do you have a car like that down at
2 Melissa's house for?

3 Didn't make any sense. And she said somebody stole it,
4 and it got wrecked, and so she was filing insurance charges on
5 it, or phoning insurance on it.

6 Q Do you know if she got an insurance settlement on it?

7 A I saw a paper, you know, after she had passed, for
8 \$20,000 for it.

9 Q Do you believe that car was stolen?

10 A No.

11 Q Who was Melissa?

12 A Melissa was her friend.

13 Q Did Brandon know Melissa?

14 A Yes.

15 Q Did Crystal tell you anything else about Brandon and any
16 murders?

17 A She said that, when Brandon's brother got, got shot,
18 that they found him and killed the person who did -- shot his
19 brother.

20 Q Did she say who they were? And you have to show our
21 court reporter. Can you say "yes" or "no"?

22 A No.

23 Q Okay. Was it your understanding, though, that Brandon
24 was one of those "they"?

25 A Yeah.

1 Q Did she share anything else that Brandon said to her
2 about snitches?

3 A That they don't mess with his money and they don't steal
4 from him and they don't snitch on him.

5 Q And Crystal shared that with you? You have to answer
6 for me, ma'am.

7 A I'm sorry. Yes.

8 Q Did there come a time that Crystal moved out of wherever
9 she had been living with Brandon?

10 A Yes.

11 Q And can you tell us the circumstances around that?

12 A The 2011?

13 Q Uh-huh.

14 A She moved out because she was scared for her life. She
15 came home.

16 Q And what had happened to Brandon around that time?

17 A He was still -- He was in jail.

18 Q And did something come up regarding some money of
19 Brandon's?

20 A She had -- I don't even know how -- She had \$30,000 that
21 was Brandon's money that she was supposed to take up to his
22 attorney and take, I guess, she said something like 10,000 out
23 for her attorney, but the DEA came to the house and got the
24 money.

25 Q Do you know what house they came to to get that money?

1 A My house on Belvedere.

2 Q Do you know how the money got there?

3 A She brought it in, but I don't know where she
4 got -- where she went to get it or whatever.

5 Q After Crystal gives the DEA this money, how would you
6 describe her demeanor? How was she acting?

7 A After she gave him the money -- gave the money, she was
8 really, really scared. That's when we went up to her house to
9 move her stuff out of the house, because she said that he was
10 going to kill her because of them taking the money.

11 Q Who is the "he" you're talking about?

12 A He was going to kill her.

13 Q Who is "he"?

14 A She was afraid of a man named "Santa."

15 Q How did this name "Santa" come up?

16 A She said that Brandon would use him.

17 Q Did she say why Brandon would use this guy named
18 "Santa"?

19 A If you needed something done.

20 Q And she took that to mean what?

21 A Death. Her being killed.

22 Q Did she ever tell you about a letter she got from
23 Brandon regarding Santa?

24 A I saw -- I found the letter. She -- I think the letter
25 was sent to Melissa, and she got it from Melissa's. And it was

1 from Brandon. And he had on it that Santa would be coming
2 early this year.

3 Q Do you remember the time of year that letter was?

4 A It was in the summertime, I believe.

5 Q Did Crystal tell you anything more about this Santa
6 person?

7 A I don't --

8 Q Was she scared?

9 A She was very scared.

10 Q What kind of things was she doing because she was
11 scared?

12 A I had ADT put on my house. I did try to take her down
13 to my cousin's house to get her out of Columbus, but she
14 heard -- she heard Crystal on the phone, talking, because
15 Brandon kept trying to call her phone. And she called a
16 detective in Pickerington because she was so scared. And my
17 cousin wouldn't let her stay there because they were afraid
18 something was going to -- they were afraid something was going
19 to happen to them if she was there.

20 Q Do you remember there being talk about Crystal going to
21 visit Brandon?

22 Let's take a moment.

23 THE COURT: Yeah.

24 (Whereupon, there was a brief interruption.)

25 THE COURT: Ms. Fyffe, do you need some water or

1 anything? Do you want to take a -- Are you ready to proceed?

2 THE WITNESS: (Nodding affirmatively.)

3 THE COURT: Please continue.

4 MR. KELLEY: Thank you, Your Honor.

5 BY MR. KELLEY:

6 Q Ms. Fyffe, do you remember some talk from Crystal about
7 Brandon wanting her to come visit him in jail?

8 A I don't remember.

9 Q Do you know if Crystal ever went to visit him in jail?

10 A I don't remember.

11 Q That's okay. I'm now going to take you to October of
12 2011. Do you remember the night before Crystal died?
13 Something happened involving Crystal. Can you tell our jury
14 about that?

15 A I think she had got a phone call -- I believe she got a
16 phone call that Brandon's uncle, or somebody, was missing. And
17 she was -- His aunt wanted her to go up and help find him. But
18 when she got there, she saw him on the porch, or whatever. So
19 she left because she -- well, she thought she was being set up
20 to be killed.

21 Q And to be fair, during this time, Brandon, himself, was
22 in jail, right?

23 A Yes.

24 Q All right. I'm going to take you to the next day, which
25 is October 19th, 2011. Tell us what's going on that evening.

1 A Crystal -- Crystal and Marcysia came home. And I was in
2 the front room. And they went into the dining room, and
3 Crystal put a pizza in the oven for Marcysia. And I was
4 texting my boyfriend, at the time, on the phone.

5 And Crystal had said -- That's when those animals came
6 up loose in that one town, and they shot all of the animals.
7 And we were talking about that for a minute. And she said,
8 That's messed up, they had to kill all them animals.

9 And I said, Yeah, it is.

10 And she says, You want to go half on a pizza?

11 And I said, Well, why do you want to go have a pizza
12 for, Crys? You just stuck one in the oven.

13 She said, I don't want that one.

14 And her favorite place to eat was Josie's Pizza. And I
15 told her -- I said, I don't want Josie's, Crys.

16 She said, Okay. So we'll do this thing.

17 She said, Okay, Grandma's.

18 I said, I don't want Grandma's.

19 She said, Okay. Donatos.

20 I said, Okay.

21 So, I got up to give her my money. And, as I was
22 getting up, I realized I had on her flip-flop sandals. And she
23 don't like nobody to wear her shoes. And then I thought, oh,
24 shoot, she is going to say something to me.

25 And she looked down at my feet, and she said, Those are

1 really comfortable, aren't they?

2 And I said, Yeah.

3 I wasn't expecting that from her.

4 So, I gave her the money. And I sat back down. And
5 then she was just sitting in there in the dining room with her
6 coat on. She just had this -- She is just sitting there like
7 this. And then she got up, and she walked over to Marcysia.
8 And she stood over Marcysia -- She stood over Marcysia, and she
9 had her arms on her, her hands on her shoulder. And Marcysia
10 is like, I'm going with you, Mom.

11 And Crystal is like, No, you're not going.

12 Marcysia is like, Why?

13 She said, You've got to stay here and watch the pizza.

14 Marcysia said, Well, Grandma can watch the pizza.

15 She said, No. You stay here.

16 And she told her that she loved her. And then, when she
17 walked to the front room and she went to go out the door, she
18 put her hand on the doorknob. And she was standing there, just
19 looking at me with this glaze, like she wanted to say
20 something. And I looked at her like -- like I'm saying, like,
21 Yeah, Crys, I love you, too. But I didn't say it. It's just
22 that look. And it seemed like it lasted forever, but she
23 walked out the door. She never came back in.

24 And she went to go get the pizza. And I don't know how
25 much time, whatever time it took to go get a pizza. But Cysia

1 was sitting in the dining room, and I was in the front room.
2 And it was around seven -- seven-forty-eight, because I was
3 texting Danny, and he was telling me about a fire out there,
4 because I thought about going to his house. And I was just
5 going to wait until Crys came home. But we heard a -- we heard
6 this shot. And Cysia is like, Grandma!

7 And I jumped up. And I said, Don't look out the window.

8 And I turned the light off, and she opened the blind,
9 and she screamed, Mom!

10 And she went running out the door. And Crystal was
11 laying on the ground. And I'm touching her, her body. And I
12 rolled her over. And her eyes were open, and I saw the shot,
13 gunshot, right here. And Cysia took off running, screaming,
14 Why did you do this to my mom? Why did you do this to my mom?

15 And I'd picked up the phone to call 911 from her phone,
16 but it was -- it was locked. So I ran in, and I got my phone
17 and came back out. And I called 911, and I told them to send
18 help. And I heard them ask if there was -- if I could feel a
19 pulse. But there was a man standing -- I don't know where he
20 came from. And I just couldn't check to see if she had a
21 pulse, and I gave the phone to him.

22 She was gone. Her eyes were open, and she was gone.

23 MR. KELLEY: May we take a moment, Your Honor?

24 THE COURT: Yes.

25 (Whereupon, there was a brief interruption.)

1 MR. KELLEY: If I may have a moment, Your Honor?

2 THE COURT: Yes, you may, Mr. Kelley.

3 (Whereupon, there was a brief interruption.)

4 BY MR. KELLEY:

5 Q Ms. Fyffe, I know it's difficult. I just want to ask
6 you a few more questions. Okay?

7 THE COURT: Ms. Fyffe, do you need more time? If you
8 need some more time, we can take a break here.

9 THE WITNESS: No.

10 THE COURT: All right. Please continue, Mr. Kelley.

11 MR. KELLEY: Thank you, Your Honor.

12 BY MR. KELLEY:

13 Q Ms. Fyffe, who did you think was responsible for what
14 happened to Crystal?

15 A Brandon.

16 MR. BERNDT: Objection.

17 THE COURT: Basis?

18 THE WITNESS: I knew he --

19 THE COURT: Just a minute.

20 Go ahead.

21 MR. BERNDT: Your Honor, I believe it would be outside
22 of her knowledge, and I don't believe her opinion as to her
23 daughter's cause of death --

24 THE COURT: Side-bar.

25

- - -

(Thereupon, the following proceeding was held at side-bar.)

THE COURT: Go ahead.

MR. BERNDT: Sorry. Your Honor.

THE COURT: Go ahead.

MR. BERNDT: She was asked who she thinks murdered her daughter. And I don't believe that her opinion as to who murdered her daughter is relevant. And I think that who is proved to be the person that murdered her daughter is relevant, and that's for the jury to decide.

THE COURT: Why should she be in a position, or why is she is in a position, to give that kind of opinion evidence, Mr. Kelley?

MR. KELLEY: I would suggest because she was aware of threats against her daughter's life and that she can basically narrow down who she believes the suspect was. I was specific and said only who she believes, not who did it, but who she believes did it.

THE COURT: All right. I'm going to sustain the objection.

(The following proceedings were had in open court.)

THE COURT: Please continue.

MR. KELLEY: Thank you, Your Honor.

BY MR. KELLEY:

Q Ms. Fyffe, after all this was over and in the years that

1 followed, did you gather up some of Crystal's items and give
2 them to law enforcement?

3 A Yes.

4 Q Do you remember what some of those items were?

5 A Letters.

6 Q Did your family also gather up photographs and bills and
7 thing like that?

8 A Yes.

9 Q Who did they give them to?

10 A The law enforcement.

11 MR. KELLEY: I have no further questions, Your Honor.
12 Thank you.

13 THE COURT: Cross-examination, Mr. Berndt?

14 MR. BERNDT: Thank you, Your Honor.

15 - - -

16 CROSS-EXAMINATION

17 BY MR. BERNDT:

18 Q Ms. Fyffe, I want to start by apologizing to you that
19 I'm in a position to have to ask you some questions. Okay?

20 A Yes.

21 Q I want you to feel free to take any breaks that you want
22 to take. And I want you to understand that I have a deep sense
23 of loss about your loss.

24 Ma'am, your daughter met Mr. Ledbetter at
25 Mr. Ledbetter's place of employment; is that correct?

1 A Yes.

2 Q Okay. And she actually worked with Robert, correct?

3 A Yes.

4 Q Your daughter, prior to meeting Mr. Ledbetter, was
5 involved with a gentleman by the name of Donald Tisdale. Is
6 that correct?

7 A I've never met him, but I know she was seeing someone
8 else before Brandon.

9 Q Does the name mean anything to you?

10 A Not Tisdale. I just know a Don.

11 Q Do you know what line of work Don was in?

12 A No.

13 Q Did she ever tell you whether he had a job?

14 A No.

15 Q You stated in your direct examination that you met
16 Robert at Cysia's sixth birthday --

17 A Yes.

18 Q -- at the party? Where was the party held?

19 A A hotel, I believe.

20 Q Did Mr. Ledbetter pay for the party?

21 A Yes.

22 Q And did Mr. Ledbetter support Crystal, financially,
23 during the course of their relationship?

24 A Yes.

25 Q And did he take care of Cysia?

1 A Yes.

2 Q Did he appear to be somebody who cared for Cysia?

3 A Yeah.

4 Q Cared for Crystal?

5 A It seemed to be like that.

6 Q And that went on for a number of years, correct?

7 A Yes.

8 Q Mr. Ledbetter also helped you out financially, too; did
9 he not?

10 A No.

11 Q No?

12 A No, sir.

13 Q Okay. You spoke of this incident that occurred in 2009
14 where your daughter was shot in the hand. Do you remember
15 speaking about that?

16 A Yes.

17 Q And I think that you said that you were surprised that
18 there weren't news reports on it. Do you remember saying that?

19 A Yes.

20 Q And you were surprised that there was no police
21 involvement, correct?

22 A Yes.

23 Q Okay. Are you aware that Crystal spoke to the police?

24 A I was aware afterwards.

25 Q Are you aware that she spoke to the police about this

1 incident the day that it happened?

2 A I was told that she talked to the police.

3 Q Were you told that that was on the day that it occurred?

4 A I do not remember, because I lost my mother.

5 Q I understand. And were you aware that she told the
6 police what you were initially told by her?

7 A Yes.

8 Q Okay. When you went to the hospital to see your
9 daughter, there was a phone call, correct?

10 A Yes.

11 Q The phone call that you took on Crystal's phone,
12 correct?

13 A Yes.

14 Q And I believe that you told the police that that was
15 from an individual named Del. Does that ring a bell?

16 A I -- Del? Don? I don't really remember the --

17 Q Do you remember --

18 A The situation --

19 Q I'm sorry.

20 A The situation that day was --

21 Q Chaotic, I'm sure. But do you remember telling the
22 police that Del is an individual who Crystal traveled to New
23 York with?

24 A What -- what -- what time are you talking about? After
25 my daughter was shot?

1 Q Well, this is a statement that I have that you made on
2 October 1st, 2015, about what occurred in the hospital room
3 when your daughter was shot on January 17th of 2009.

4 A My daughter was shot October 19th.

5 Q I meant in the hand.

6 A My daughter went to New York with a guy.

7 Q Do you remember when you took that call that Crystal was
8 upset?

9 A Yes.

10 Q She actually asked you to leave the hospital room?

11 A Yes.

12 Q She told you that you didn't know what you did?

13 A Yes.

14 Q And you told the police that that was a phone call from
15 somebody named Del?

16 A I didn't talk to the police during that time about the
17 gunshot.

18 Q I meant in October of 2015 when you spoke to the police.

19 A I don't remember even talking to the police, is what I'm
20 trying to -- because there was -- I don't remember talking to
21 the police in October 15th -- on October 15th of 2011, because
22 I don't remember having a reason to talk to them. My daughter
23 wasn't shot until October 19th. That's the only time when I
24 talked to the police. So, I don't remember this conversation.
25 I guess that's what I'm trying to say.

1 Q I think I can clear it up.

2 A Thank you.

3 Q I refer to the police as prosecutors, as well as
4 uniformed police officers. So that's my fault. But I have a
5 statement here in front of me that says that, on October 1st of
6 2015 --

7 A Oh, okay. You said '15.

8 Q Right. And that would be a statement that you made to
9 people at the FBI office at 425 Nationwide Boulevard,
10 Mr. Bajus, Special Agent Erick Lauber, Detective Mitch Seekman,
11 Assistant United States Attorneys DeVillers, Martinez, and
12 Kelley. Do you remember that statement?

13 A I talked to them. And if I said that on the statement,
14 then that's what I said.

15 Q I just want to make sure that I understand what you
16 said.

17 That there was a phone call that came in on Crystal's
18 phone when you were at the hospital when she was shot in the
19 hand in 2009 --

20 A Yes.

21 Q -- do you remember that?

22 A Yes.

23 Q Do you remember telling these gentlemen that you
24 answered the phone and told Del that Crystal had been shot and
25 was in the hospital?

1 A I told them about the phone call. I don't remember if I
2 said "Del" or not. But, yes, I did tell them about the phone
3 call. And she got upset because I told him that she was in the
4 hospital. That's what I said.

5 Q Do you remember stating that Del is an individual who
6 Crystal traveled to New York with but that you did not believe
7 that he was an associate of Mr. Ledbetter? Do you remember
8 telling them that?

9 A She went to New York. She was trying to leave Brandon,
10 is what she told me. She came back. And then that's when he
11 held her and shot her.

12 Q And did you remember telling the prosecutors that
13 Crystal asked you if you knew what you just did?

14 A Yes.

15 Q Okay. And then she asked you to leave?

16 A Yes.

17 Q Okay. Do you know who this person is that she traveled
18 with to New York?

19 A I never met Crystal's friends like that.

20 Q Do you know what she was doing in New York?

21 A No, I don't.

22 Q Okay. Do you know if she has any friends or family in
23 New York?

24 A No, she doesn't.

25 Q Okay. You said that, after Crystal was shot in the

1 hand, that you came home, and you saw Mr. Ledbetter at your
2 house, and that surprised you?

3 A Yes.

4 Q Okay. So that is the house at 614 Belvedere?

5 A Yes.

6 Q So, shortly after January of 2009, Mr. Ledbetter knew
7 where you lived, correct?

8 A Yes, he knew.

9 Q Did he come to the house on other occasions?

10 A That's the first time Brandon has ever been in my house
11 with me being in my house. He has never been in my house. If
12 he was ever in my house, it was when I wasn't there. But while
13 I was there, he was never in my house except for that one time.

14 Q Okay. And then he took Crystal to Hawaii, correct?

15 A Yes.

16 Q Very close to her birthday, correct?

17 A Yes.

18 Q And her birthday is August 3rd, correct?

19 A Yes.

20 Q So that would be seven months after the shooting
21 incident occurred, correct?

22 A Yes.

23 Q Okay. You said that things changed in regard to Crystal
24 after Robert Ledbetter was arrested in May of 2011. Do you
25 remember testifying to that?

1 A February? He got arrested in February of 2011?

2 Q I believe it was May, but we'll use --

3 A Okay. Okay.

4 Q Okay?

5 A Yeah.

6 Q Okay. Thank you.

7 A February was the first time she told me he was running
8 from the police for the Pickerington.

9 Q Right, that he was a fugitive at that point, correct?

10 A Right. Right.

11 Q And did she tell you -- Do you remember telling the
12 prosecutors that you thought that she had seen Mr. Ledbetter
13 after he became a fugitive?

14 A I told her, I sure hope you're not doing nothin' for him
15 because he is and she would get in trouble if she was.

16 Then she told me she wasn't. If she did -- I'm sure she
17 did because she had to come up with the \$30,000 she got from
18 someone.

19 Q So you do believe that she saw Mr. Ledbetter after
20 February of 2011 but before he was arrested?

21 A Yes.

22 Q I believe that my memory of your direct testimony was
23 that she started telling you things after she had hired a
24 lawyer?

25 A Yes.

1 Q You spoke about the blue car.

2 A Yes.

3 Q Okay. And you said that you didn't believe it was
4 stolen; is that right?

5 A I said I didn't believe it was.

6 Q Now, my understanding of your testimony was that the
7 vehicle was at somebody else's residence.

8 A Yes.

9 Q And that you were informed at some point that there was
10 an insurance claim made?

11 A I found a paper that showed she had got insurance for
12 the vehicle.

13 Q And that the vehicle had been stolen and wrecked?

14 A Yes.

15 Q Now, Crystal started telling you things after
16 Mr. Ledbetter was arrested in May of 2011 and after she
17 retained Mr. Palmer's services, but she didn't tell you
18 anything about this vehicle not being stolen, did she?

19 A I can't remember if she said anything, before or after
20 that, about the vehicle as far as the date.

21 Q Now, there was some money that was at your house,
22 correct?

23 A Yes.

24 Q Okay. And I believe that the money was seized on May
25 26th of 2011, correct?

1 A Yes.

2 Q Did you see that money come into your house?

3 A I didn't see the money come into my house, but I did see
4 the money in my house.

5 Q Okay. And were you told by Crystal that that money came
6 from Brandon?

7 A I was told that the money was for Brandon to go up to
8 pay his attorney and 10,000 for her attorney.

9 Q So that's a "yes" that you were told that the money came
10 from Brandon?

11 A Yes.

12 Q Okay.

13 A It was Brandon's money. It couldn't have come directly
14 from Brandon, because he was in jail, but it was Brandon's
15 money.

16 Q Okay. And Crystal told you that?

17 A Yes.

18 Q You mentioned somebody named "Santa," right --

19 A Yes.

20 Q -- that Crystal was afraid of, correct?

21 A Yes.

22 Q And you mentioned that Santa was the person that
23 Mr. Ledbetter would go to to get things done, correct?

24 A Yes.

25 Q So, from what you understand about that, Mr. Ledbetter

1 has been involved in a series of crimes with Santa?

2 A I would -- From what she said, that -- she must have
3 believed it, or she wouldn't have been so scared, which made me
4 scared.

5 Q I understand. But the impression that you got from
6 Crystal about the relationship between Robert Ledbetter and
7 this person we're referring to as Santa was that they engaged
8 in a series of ongoing criminal acts?

9 A Yes.

10 Q Okay. So, if Mr. Ledbetter committed a robbery, based
11 upon what your daughter told you, you would believe that
12 probably would involve Santa?

13 A No. I didn't say that.

14 Q I'm not -- I'm not saying you did say that.

15 A No.

16 Q You wouldn't believe that?

17 A Will you ask me the question?

18 Q Well, I'm just asking you whether or not you believe
19 that Mr. Ledbetter -- based upon what you heard from your
20 daughter, that Mr. Ledbetter and Santa committed crimes
21 together?

22 A Yes.

23 Q Okay. Did she impart to you what types of crimes they
24 committed together?

25 A She said that he would use him to take care of business.

1 Q Okay. That was the extent of it?

2 A From what I recall.

3 Q Okay. There was some items that were turned over to law
4 enforcement after Crystal's death, correct?

5 A Yes.

6 Q Okay. Some letters?

7 A Yes.

8 Q Okay. Some letters that were received by Crystal?

9 A Yes.

10 Q From Mr. Ledbetter?

11 A Yes.

12 Q As well as letters that Crystal wrote to Mr. Ledbetter,
13 correct?

14 A Yes.

15 MR. BERNDT: Your Honor, if I could just have one
16 moment?

17 THE COURT: Yes, you may, Mr. Berndt.

18 MR. BERNDT: Thank you.

19 (Whereupon, there was a brief interruption.)

20 BY MR. BERNDT:

21 Q You testified that there was a person named Leah
22 Hilliard who was in the hospital room with Crystal when she was
23 shot in January of 2009.

24 A Yes.

25 Q Have you talked to Leah Crystal, or, I mean, Leah

1 Hilliard, about what happened in regard to Crystal in January
2 of 2009?

3 A Yes.

4 Q Okay. Was she with Crystal when the incident occurred?

5 A No.

6 Q Do you know if law enforcement ever talked to Leah
7 Hilliard?

8 A I don't know.

9 Q We're almost done, ma'am. I apologize.

10 You mentioned that, the day before Crystal passed, that
11 she was asked to come, or to go, somewhere. Where was she
12 asked to go?

13 A Brandon's aunt's house. Aunt Paulette, I believe it
14 was.

15 Q And you said that Crystal believed that she was being
16 lured out?

17 A Yes.

18 Q Mr. Ledbetter knew where you lived in 2009; did he not?

19 A Yes.

20 MR. BERNDT: Thank you, ma'am. Again, thank you.

21 THE COURT: Mr. Gatterdam?

22 MR. GATTERDAM: No questions.

23 THE COURT: Ms. Dixon?

24 MS. DIXON: No questions.

25 THE COURT: Mr. Meyers?

1 MR. MEYERS: No questions, Your Honor.

2 THE COURT: Mr. Nolder?

3 MR. NOLDER: No questions.

4 THE COURT: Any redirect, Mr. Kelley?

5 MR. KELLEY: Yes, Your Honor.

6 THE COURT: All right.

7 - - -

8 REDIRECT EXAMINATION

9 BY MR. KELLEY:

10 Q Ms. Fyffe, did Crystal ever explain to you why she got
11 so upset at the hospital over that phone call?

12 A Yes.

13 Q What did she tell you?

14 A Because Brandon had shot her, and she was scared, and
15 that that was -- I, by telling him, was going to cause more
16 trouble.

17 Q Was anyone else at the hospital that you saw besides
18 Leah?

19 A Yes.

20 Q Who else was at the hospital?

21 A When I left, a black girl, with a little boy, was
22 walking in. And Crystal told me, later on, that that was
23 Brandon's sister, and she was there to make sure that, if the
24 cops came, that she would not talk to the cops about what had
25 happened.

1 MR. KELLEY: I have no further questions, Your Honor.

2 THE COURT: Mr. Berndt, any recross?

3 MR. BERNDT: Very briefly, Your Honor.

4 - - -

5 RECROSS-EXAMINATION

6 BY MR. BERNDT:

7 Q Ms. Fyffe, I just want to make sure that I understand.
8 Crystal didn't start telling you the truth about things until,
9 basically, May of 2011, her truth, correct?

10 A Did you say "her truth"?

11 Q Yes.

12 A The truth is what she told me, yes.

13 Q Okay. In May of 2011?

14 A I don't -- I didn't say May of 2011, but --

15 Q Okay. Go ahead.

16 A She told me the fact after -- not in 2009. She told me
17 after Brandon was in jail. That's when she told me.

18 Q I understand. And the phone call which occurred in the
19 hospital room was in 2009?

20 A Yes.

21 Q Did Crystal tell you what kind of trouble occurred,
22 because of that phone call, between 2009 and 2011, because I
23 believe your statement was your disclosure to this person on
24 the phone was going to cause more trouble? Was there any more
25 trouble?

1 A To -- I believe Crystal's thing was that, if Brandon
2 knew that she had went to New York with this guy, it was going
3 to cause trouble.

4 Q Okay.

5 A And that's why she said, You just don't know what you
6 did.

7 She just got shot in the hand, and she was scared. I
8 don't -- I don't know what else -- I mean --

9 Q That's fine. I just have a couple more questions for
10 you.

11 The night that Crystal was shot in the hand, you said
12 that Mr. Ledbetter didn't stay at the hospital, correct?

13 A No. He dropped her off and left.

14 Q And he told you that he was out looking for the shooter,
15 correct?

16 A That's what he told me.

17 Q Okay. And a relative of his was at the hospital,
18 correct?

19 A When I was leaving, his sister was walking in, because
20 she had told me to leave. I was not in that hospital room,
21 probably for ten minutes, and she had told me to leave.

22 Q That was, Crystal told you to leave?

23 A Because I upset her because I answered the phone.

24 Q Brandon's relative did not ask you to leave, correct?

25 A No. As I was walking out, she was walking in.

1 Q Okay. Okay. With a child?

2 A With a child.

3 Q Okay. A relative --

4 A His sister.

5 Q A relative visiting somebody that he cared for, correct?

6 A If that's what you want to call it, then --

7 Q Had you ever met his sister before?

8 A No.

9 MR. BERNDT: Okay. Thank you.

10 MR. KELLEY: No further questions, Your Honor. Thank
11 you.

12 THE COURT: Ms. Fyffe, thank you very much, ma'am.
13 You may be excused.

14 MR. DEVILLERS: May we approach, Your Honor?

15 THE COURT: Yes.

16 - - -

17 (Thereupon, the Court and Counsel conferred out of the
18 hearing of the court reporter.)

19 (The following proceedings were had in open court.)

20 THE COURT: Ladies and gentlemen, that will conclude
21 our proceedings for today. There was an additional witness who
22 became ill who was scheduled to testify today and complete our
23 day of taking evidence but, because of the illness, was not
24 able to come. So, we will resume, tomorrow morning, at 9:00
25 a.m. And, hopefully, by the end of this week, I'll be able to

1 confer more about the schedule. But what I told you earlier
2 about your likely getting the case the first week of June
3 remains the case. But I just want to be able to tell you more
4 precisely what our schedule will be going forward.

5 Ladies and gentlemen, thank you, again, for your
6 patience and attentiveness. Enjoy your evening drive, safely,
7 going home. I look forward to seeing everyone first thing
8 tomorrow morning.

9 (Jury out at 3:27 p.m.)

10 THE COURT: Mr. Devillers, so, in light of today's
11 testimony, will the witness who did not appear today, will he
12 or she come in tomorrow?

13 MR. DEVILLERS: Probably. We don't know yet. He's in
14 Kansas City, Your Honor. So we're trying to get him back. I
15 am guessing it will be next week, but we'll see.

16 THE COURT: All right. Are we still, then, looking at
17 your completing your case on or about the 26th?

18 MR. DEVILLERS: I would say before that.

19 THE COURT: Okay.

20 MR. DEVILLERS: I'm confident, relatively confident,
21 that we will be done before the 26th. That means I believe we
22 can be finished on Wednesday, the 25th.

23 THE COURT: Okay. And if that's the case, then
24 defense would go on the 26th and the 1st. The 31st, that's
25 right.

1 Do you think, from the defense perspective, that we will
2 take -- if you begin your case in chief on the 26th, that
3 you'll be done with your presentation of evidence by close of
4 business on the 31st, or sometime earlier, maybe by noon on the
5 31st? Any thoughts, Mr. Berndt?

6 MR. BERNDT: Your Honor, I can only speak for myself.

7 THE COURT: Right.

8 MR. BERNDT: I do believe I'll be calling a few
9 witnesses. I don't believe they'll be lengthy, maybe a half
10 day.

11 THE COURT: Since you'll be going first, then, and
12 your witnesses will start on the 26th, do you have enough
13 witnesses to fill the 26th, or just partially?

14 MR. BERNDT: I would -- I would say that, probably not
15 the whole day.

16 THE COURT: Okay. All right.

17 Would you go beyond lunchtime, do you think?

18 MR. BERNDT: It's possible. I think that, if it was,
19 it wouldn't be much.

20 THE COURT: All right. Gotcha.

21 Mr. Gatterdam?

22 MR. GATTERDAM: Your Honor, I think the problem is
23 that, while we may not have witnesses beyond -- We have two
24 experts, and I believe they started to make arrangements to be
25 here on -- I believe it would be Tuesday. And one of them, I

1 think, is renting a car. The other, I think, would be flying.
2 So that's the only issue with switching that up. So we'd have
3 to have further discussions with them. And that's now about a
4 week out.

5 THE COURT: Okay. Ms. Dixon?

6 MS. DIXON: We don't.

7 THE COURT: I'm coming back to you, Mr. Gatterdam.

8 MR. GATTERDAM: Understood.

9 THE COURT: Let's say that Mr. Berndt puts on his
10 witnesses and they take half of the day on Thursday. Your
11 experts aren't here yet. So I could go on to Mr. Liston's
12 witnesses, if any.

13 MS. DIXON: Your Honor, we pretty much presented our
14 defense through cross-examination.

15 THE COURT: Okay.

16 MS. DIXON: So we won't have any.

17 THE COURT: That's fine.

18 Mr. Meyers or Mr. McVay?

19 MR. McVAY: Your Honor, at this point, we're not
20 anticipating calling witnesses.

21 THE COURT: All right.

22 Mr. Nolder.

23 MR. NOLDER: I don't, either, Your Honor.

24 THE COURT: Okay.

25 So, here is what I would like for you to do, since the

1 experts are being -- we're paying for the experts, the Court
2 is, as Mr. Harris is indigent. Maybe we should see if we can
3 get them -- One is driving?

4 MR. DURKIN: Your Honor, he's -- we have
5 moved -- Originally, we had believed that June 6th was when the
6 defense would be made. And, fortunately, now it's earlier than
7 that. So our witness has said that, given the short period of
8 time, he said: I'll reserve -- I'm going to rent a car on
9 Sunday.

10 THE COURT: Where is he coming from?

11 MR. DURKIN: He's coming from Virginia. And I don't
12 remember the name of the town, but it's near Richmond, Your
13 Honor. The other witness who is from California, I am still
14 trying to work out the logistics of that. He has other
15 commitments, other cases, he is supposed to testify for. But
16 he said he would -- he understood that we had to move it from
17 the 6th to the Tuesday after Memorial Day. He said, I will
18 make it work.

19 THE COURT: All right. Here is what I -- Here is what
20 I ask you to do: The one who is driving, obviously, has some
21 flexibility. Why not have him here for Thursday? Then you
22 could put your other expert on on Tuesday morning. And then
23 we'll be done with the defense case, probably, by Tuesday,
24 noon. And we could start closing arguments Tuesday, noon. And
25 that will give us ample time to get closing arguments completed

1 by Thursday, noon, which has now become my goal, because that's
2 when we have to allow Juror #10 to leave for his daughter's
3 graduation. And then we can come back Friday morning, the 3rd.
4 And I can charge the jury, and they can begin. So that would
5 be the schedule that I would prefer.

6 MR. DURKIN: Your Honor, obviously, I would like to
7 consult with the experts as to what other court commitments
8 they have and report back to you on that matter. I understand
9 the Court's -- what the Court wants. And I will certainly
10 convey that to them. And it's great that we're getting done
11 faster than we anticipated, but it's been a moving target. And
12 we're trying to work with it.

13 THE COURT: No. I understand. And I understand that
14 experts can be in demand. But, as I said, the California
15 expert appears to understand that he's going on on Tuesday. So
16 we're not -- I'm not asking you to change anything that was not
17 already in place.

18 The Virginia expert, you know, the Court is going to pay
19 for his travel anyway. So whether he's flying or driving,
20 since the Court is paying for it anyway, I would just as soon
21 as fly him in, get him in here for Thursday, have him testify
22 on Thursday and be done with it, as opposed to wasting half a
23 day on Thursday, and then that throws us off otherwise.

24 So, what I'm going to direct you to do is to direct the
25 Thursday expert, the driving expert, to get here, by car or

1 flight, for testimony beginning either late morning or early
2 afternoon Thursday. So, he should prepare to be here Wednesday
3 night, because, you know, I don't want -- you know, at this
4 point I would prefer not to have -- since we're talking about
5 just two witnesses, there is no need to waste, waste, waste a
6 day with respect to that.

7 So, let's make that happen, Mr. Durkin. You can report
8 back to the Court sometime before close of business tomorrow as
9 to any issues with the Virginia expert. And I'd be happy to
10 talk to him and explain to him the necessity of him being here
11 on Thursday, why we need him here on Thursday. I would be more
12 than happy to do it. Do it all the time.

13 MR. DURKIN: Thank you, Your Honor.

14 THE COURT: Now, is there anything else that we need
15 to cover on the schedule? I think we're pretty good. And once
16 this final piece of the puzzle, Mr. Durkin, is put in place, I
17 can even advise the jury as to what our schedule will be. And
18 then you all will know what your schedule will be so that you
19 can prepare, accordingly, for closing arguments.

20 But based on what you told me, if we start closing
21 arguments Tuesday afternoon, we should be done, at the latest,
22 by noon on Thursday, because we have all day Wednesday to go.
23 And then I'm going to have the jury come in on Friday to begin
24 deliberations.

25 Mr. Devillers, anything?

1 MR. DEVILLERS: Your Honor, we have the Exhibit 31-31,
2 the ballistic report.

3 THE COURT: Would you give that to Ms. Clark?

4 Ms. Clark, I'll have you -- You can just distribute it.

5 MR. DEVILLERS: I'll give it to Ms. Clark.

6 THE COURT: Okay. Thank you.

7 Thank you, Mr. Devillers.

8 MR. DEVILLERS: You're welcome, Your Honor.

9 THE COURT: Is there anything else from the
10 government?

11 MR. DEVILLERS: There is not, Your Honor.

12 THE COURT: Mr. Durden?

13 MR. DURDEN: No, Your Honor. Thanks.

14 THE COURT: Mr. Gatterdam?

15 MR. GATTERDAM: No, Your Honor.

16 THE COURT: Ms. Dixon?

17 MS. DIXON: No, sir.

18 THE COURT: Mr. McVay?

19 MR. McVAY: No, sir.

20 THE COURT: Mr. Nolder?

21 MR. NOLDER: No, sir.

22 THE COURT: Have a good evening, everyone. I'll see
23 everyone tomorrow.

24 (Proceedings were concluded at 3:30 p.m.)

25 - - -

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WITNESS INDEX

- - -

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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PLAINTIFF'S:

Timothy Maclellan	4505	4514		
Keith Leighton	4517	4533	4540	4541
Steven Palmer	4542	4573	4619	4624
By Mr. Gatterdam		4608		4626
By Ms. Dixon		4612		4628
By Mr. Meyers		4617		
(Further)			4630	4631
(Further By Mr. Gatterdam)				4631
(Further By Ms. Dixon)				4634
Timothy Duerr	4642	4651	4664	
Eileen Fyffe	4670	4700	4714	4715

- - -

INDEX OF EXHIBITS

- - -

PLAINTIFF'S:RECEIVED

31-5	4647
84-2#-002 THROUGH 84-2#-034	4511

C E R T I F I C A T E

We, Shawna J. Evans, Denise N. Errett, do hereby
certify that the foregoing is a true and correct transcript of
the proceedings before the Honorable Algenon L. Marbley, Judge,
in the United States District Court, Southern District of Ohio,
Eastern Division, on the date indicated, reported by us in
shorthand and transcribed by us or under our supervision.

s/Shawna J. Evans
Shawna J. Evans, RMR
Official Federal Court Reporter

s/Denise N. Errett
Denise N. Errett, RPR FCRR
Official Federal Court Reporter

May 18, 2016